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LAW ASSOCIATION PHILADELPHIA

RECORD, CASE No. 14,283.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 280. 40

THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE AND POTOMAC RAILROAD COMPANY, THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY, THE ALEXANDRIA AND WASHINGTON RAILROAD COMPANY, AND JOHN CASSELS, PLAINTIFFS IN ERROR,

vs.

THOMAS W. JONES.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 14, 1890.

RECORD, CASE No. 14,283.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 260.

THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE AND POTOMAC RAILROAD COMPANY, THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY, THE ALEXANDRIA AND WASHINGTON RAILROAD COMPANY, AND JOHN CASSELS, PLAINTIFFS IN ERROR,

vs.

THOMAS W. JONES.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Declaration, &c. Filed July* 25, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Plaintiff, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, THE Baltimore and Potomac Railroad Company, The Virginia Midland Railway Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, Defendants.	At Law. No. 26298.

1. The plaintiffs sue the defendants, The Pennsylvania Railroad Company, a corporation organized under the laws of the State of Pennsylvania; The Baltimore and Potomac Railroad Company, a corporation organized under the laws of the State of Maryland and acts of the Congress of the United States of America; The Alexandria and Washington Railroad Company, The Virginia Midland Railway Company, and The Alexandria and Fredericksburg
2 Railway Company, which three last-mentioned companies are corporations organized under the laws of the State of Virginia, and *of* which companies have an office in the city of Washington and the District of Columbia for the transaction of business of said five companies, for the sum of twenty-five thousand dollars as damages, and for cause of said claim states:

For that heretofore, to wit, on the 19th day of February, 1885, and prior thereto, the said defendants were engaged as common carriers in the transportation of passengers, persons, and freight upon and along the several lines of railroads belonging to said companies, and, among others, along the line of the road of said Alexandria and Washington Railroad Company, running between the cities of Alexandria and Washington, under an arrangement or contract for their common benefit, the full and exact terms of which are unknown to this plaintiff, and by which they were jointly interested in the running and management of the said railroads; that being so engaged and interested in the transportation of passengers, persons,
3 and freight as aforesaid for compensation and otherwise, and the roads of the said defendants being postal roads under and by virtue of the laws of the United States and the regulations of the Post Office Department, the said defendants became entitled to and were employed by the said Post Office Department to transport the mail of the United States upon and along the lines of their said roads; that, for the purpose of discharging the duty of transporting the said mails of the United States, for which the said roads received compensation from the Government of the United States, the said defendants provided the necessary mail postal cars, in which the said mails were transported as required by said law and regulations, and that the said defendants were engaged in the performance of

that duty on the 19th day of February, 1885, aforesaid; that on the day and year last aforesaid this plaintiff was in service of the United States in the capacity of railway postal clerk, and that the route to which he was assigned as such clerk was from said city of Washington, in the District of Columbia, to the town of Charlotte,
4 in the State of North Carolina, and return; that on the day and year last aforesaid this plaintiff, in the discharge of his duty as such railway postal clerk and with the knowledge and approval and permission of the said defendant, was in the mail postal car in which the United States mail was then being transported and of which he had partial charge, which was attached to and formed part of a train for the conveyance of passengers and persons from Charlotte, North Carolina aforesaid, to Alexandria and Washington aforesaid on and over the said Alexandria and Washington railroad from said Alexandria to said Washington; that on the night of the said 19th day of February, 1885, while the said train was proceeding from the said city of Alexandria to the city of Washington, at or near Four Mile run, in the State of Virginia, near which there is a tunnel, through which the said road runs, the said train was run into by the Alexandria and Fredericksburg fast freight train which had left the depot of the said Baltimore
5 and Potomac road and was going south therefrom and a collision occurred by which the said postal car was demolished; that the said collision was caused by gross negligence and carelessness of the said defendants, their agents and employees, and by no want of care or any negligence on the part of this plaintiff; that by the said collision and the destruction of the said mail car, thus caused by the want of care and the negligence of the said defendants, their agents, servants, and employees as aforesaid, this plaintiff was buried under the wreck created by said collision; that while he was thus buried under the debris of the wreck, with his face downward and his legs so tightly wedged that it was impossible for him to move, he was surrounded by burning coals, which added to his tortures and by which his person was badly burned; that he was badly bruised and drenched with water, the left side of the large bone above the pelvis injured, a large splinter run through the knuckles of his right index finger, and his person otherwise seriously injured; that after being dragged from the wreck, soaking wet and exposed to the cold winter
6 night air for a long period, he suffered chill after chill, and that the said defendants, their agents, servants, and employees, though well knowing the said accident occurred, and that the plaintiff and other persons had been seriously injured, permitted this plaintiff to remain at the scene of the wreck and exposed to great suffering for a period of about five hours before making any provision for his relief or comfort or providing medical aid.

And this plaintiff here avers that in consequence of the said wrongful acts of the said defendant, their agents, servants, and employees, and the injuries he suffered by said collision he lost the clothing which he wore, suffered greatly in body and mind, and was put to great expense for medical aid and other services, and was

injured permanently in his body and his health affected and impaired so as to render him unable to perform manual, clerical, and other labor without great suffering; wherefore he claims of the said defendants the sum of twenty-five thousand dollars, with interest and costs.

WILLIAM A. COOK,
Att'y for Pl'ff.

7 The defendants are to plead hereto on or before the first special term of court, occurring twenty days after service hereof; otherwise judgment.

WILLIAM A. COOK,
Att'y for Pl'ff.

Summons. Issued July 25th, 1885.

In the Supreme Court of the District of Columbia, the 25th Day of July, 1885.

THOMAS W. JONES, Plaintiff, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE and POTOMAC Railroad Company, The Virginia Midland Railway Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, Defendants.	At Law. No. 26298.

The President of the United States to the defendants, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term, occurring 20 days after service
8 of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
[SEAL.] By J. R. YOUNG,
Assistant Clerk.

—— ——, *Attorney.*

NOTE.—The special terms of the court comm-ce on the first Tuesday of every month except August, in which month there is no term of the court.

Marshal's Return.

Served copies of the declaration, notice to plead, affidavit, and this summons on the defendants, The Pennsylvania Railroad Company, by service on Joseph K. Sharp, superintendent; The Baltimore and Potomac Railroad Company, by service of Joseph K. Sharp, superintendent; The Virginia Midland Railway Company, by service on Nathaniel McDaniel, superintendent; The Alexan-

dria and Fredericksburg Railroad Company, by service on Joseph K. Sharp, superintendent; on The Alexandria and Washington Railroad Company, by service on Joseph K. Sharp, superintendent, August 5th, 1885.

9

CLAYTON McMICHAEL, *Marshal.*

Defendant's Plea. Filed Oct. 19, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298.

And now comes the said defendant, The Pennsylvania Railroad Company, and for plea says it is not guilty as alleged in plaintiff's declaration herein.

ENOCH TOTTEN,
Att'y for Def't.

Defendant's Plea. Filed Oct. 19, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Plaintiff,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY *et al.* } Law. No. 26298.

10 And now comes the said defendant, The Baltimore and Potomac Railroad Company, and for plea says it is not guilty as alleged in plaintiff's declaration herein.

ENOCH TOTTEN,
Att'y for Def't.

Defendant's Plea. Filed Oct. 19, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Plaintiff,
vs.
THE VIRGINIA MIDLAND RAILWAY COMPANY *et al.* } Law. No. 26298.

And now comes the defendant The Virginia Midland Railway Company and for plea says it is not guilty, as alleged in plaintiff's declaration herein.

EPPA HUNTON,
By E. T., *Att'y for Def't.*

Defendant's Plea. Filed Oct. 19, 1885.

In the Supreme Court of the District of Columbia.

11 THOMAS W. JONES, Plaintiff,
vs.
THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY *et al.* } At Law. No. 26298.

And now comes the defendant The Alexandria and Fredericksburg Railway Company and for plea says it is not guilty as alleged in plaintiff's declaration herein.

ENOCH TOTTEN,
Att'y for Def't.

Defendants' Plea. Filed Oct. 19, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Plaintiff,
vs.
THE ALEXANDRIA AND WASHINGTON RAILROAD COMPANY *et al.* } Law. No. 26298.

And now comes the defendant The Alexandria and Washington Railroad Company and for plea says it is not guilty as alleged in plaintiff's declaration herein.

ENOCH TOTTEN,
Att'y for Def't.

12 *Replication to Defendants' Pleas. Filed Oct.* 26, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
PENNSYLVANIA RAILROAD COMPANY, BALTIMORE AND POTOMAC RAILROAD COMPANY, VIRGINIA MIDLAND RAILWAY COMPANY, ALEXANDRIA & FREDERICKSBURG RAILWAY COMPANY, & ALEXANDRIA AND WASHINGTON RAILROAD COMPANY. } Law. No. 26298.

The plaintiff joins issue upon the defendants' pleas.

WILLIAM A. COOK,
Att'y for Pl'ff.

Notice of Trial to Eppa Hunton. Filed Oct. 26, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
PENNSYLVANIA RAILROAD COMPANY, BALTIMORE and Potomac Railroad Company, Virginia Midland Railway Company, Alexandria and Fredericksburg Railway Company, and Alexandria and Washington Railway Company. } At Law. No. 26298.

13 Take notice that the issue joined in this cause will be tried at the next term of the court.

WILLIAM A. COOK,
Att'y for Pl'ff.

To Eppa Hunton, att'y for Virginia Midland Railway Company.
Oct. 26, 1885.

Notice of Trial to Enoch Totten. Filed Oct. 26, 1885.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
PENNSYLVANIA RAILROAD COMPANY, BALTIMORE and Potomac Railroad Company, Virginia Midland Railway Company, Alexandria and Fredericksburg Railway Company, and Alexandria and Washington Railroad Company. } Law. No. 26298.

Take notice that the issue joined in this cause will be tried at the next term of the court.

WILLIAM A. COOK,
Att'y for Pl'ff.

To Enoch Totten, att'y for def'ts except Virginia Midland Railway Company.
Oct. 26, 1885.

14 *Note of Issue, &c. Filed Oct.* 26, 1885.

In the Supreme Court of the District of Columbia, the 26th Day of October, 1885.

THOMAS W. JONES
vs.
THE PENNSYLVANIA R. R. Co. *et al.* } At Law. No. 26298.

The clerk of said court will place this cause on the calendar for trial.

Last pleading filed Oct. 26, 1885.

ENOCH TOTTEN &
EPPA HUNTON,
Att'ys for Def'ts.
WILLIAM A. COOK,
Attorney for Plaintiff.

To the clerk.

Note of Issue and Notice of Trial. Filed Jan'y 6, 1888.

Note of issue.

THOMAS W. JONES, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.*, Defendant-. } At Law. No. 26298.

Attorney for plaintiff, William A. Cook.
Attorneys for defendants, Enoch Totten & Hunton & Chandler.
Last pleading filed Oct. 26, 1885.

WILLIAM A. COOK,
Attorney for —.

15 In the Supreme Court of the District of Columbia, the — Day of January, 1888.

Notice of Trial.

Between—

THOMAS W. JONES, Plaintiff,
and
THE PENNSYLVANIA RAILROAD COMPANY *et al.*, Defendant-. } At Law. No. 26298.

Take notice that the issue joined in this cause will be tried in the next term of this court.

WILLIAM A. COOK,
Attorney for Pl'tf.

To Enoch Totten and Hunton & Chandler, attorneys for def'ts, The Pennsylvania Railroad Company *et al.*

Service of copy of above acknowledged this 5 day of Jan'y, 1888.
ENOCH TOTTEN.
EPPA HUNTON.

16 *Motion to File Additional Plea. Filed Jan'y* 16, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298.

CHARLES T. STEWART
vs.
PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26303.

Please take notice that on Wednesday, the 18th day of January, 1888, at the opening of court, or as soon thereafter as counsel can be heard, I will move the court for leave to file an additional plea in the above-entitled causes.

ENOCH TOTTEN,
Att'y for Def'ts.

To Mr. W. A. Cook, att'y for pl't'ffs.

Service accepted Jan'y 16, 1888.
WILLIAM A. COOK, *For Pl't'f.*

17 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the third Monday, it being the seventeenth day, of October, A. D. 1887.

MONDAY, *October 17th, A. D.* 1887.

By order of Walter S. Cox, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

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FRIDAY, *January 20th, A. D.* 1888.

Session resumed pursuant to adjournment, Cox, justice, presiding.

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THOMAS W. JONES, Pl't'ff,
vs.
PENNSYLVANIA RAILROAD COMPANY *et al.*, Def'ts. } At Law. No. 26298.

On motion of the defendants, by their attorney, Mr. Totten, leave is granted each of them to file an additional plea.

18 *Additional Plea. Filed Jan.* 20, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298.

Additional plea of the defendant The Pennsylvania Railroad Company.

And for a further plea the said defendant says it was not at the time of the alleged injury and never was a common carrier of passengers and freight in manner and form as in said declaration alleged.

ENOCH TOTTEN,
Att'y for Def't.

Additional Plea of the Defendant The Baltimore and Potomac Railroad Company Filed Jan. 20, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
BALTIMORE & POTOMAC RAILROAD COMPANY *et al.* } At Law. No. 26298.

19 And for a further plea the said defendant says it was not at the time of the alleged injury and never was a common carrier of passengers and freight in manner and form as in said declaration alleged.

ENOCH TOTTEN,
Att'y for Def't.

Additional Plea of the Defendant The Alexandria and Fredericksburg Railway Company. Filed Jan. 20, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY *et al.* } At Law. No. 26298.

And for a further plea the said defendant says it was not at the time of the alleged injury and never was a common carrier of passengers and freight in manner and form as in said declaration alleged.

ENOCH TOTTEN,
Att'y for Def't.

20 *Additional Plea of the Defendant The Alexandria and Washington Railway Company. Filed Jan.* 20, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES *vs.* ALEXANDRIA AND WASHINGTON RAILROAD COMPANY *et al.*	At Law.	No. 26298.

And for a further plea the said defendant says it was not at the time of the alleged injury and never was a common carrier of passengers and freight in manner and form as in said declaration alleged.

ENOCH TOTTEN,
Att'y for Def't.

Motion for Production of Papers, &c. Filed Jan. 25, 1888.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES, Pl't'f, *vs.* THE PENNSYLVANIA RAILROAD CO., THE BALTIMORE & POTOMAC RAILROAD CO., THE ALEXANDRIA & WASHINGTON RAILROAD CO., THE VIRGINIA MIDLAND RAILROAD CO., THE ALEXANDRIA & FREDERICKSBURG RAILROAD CO.	At Law.	No. 26298.

21 And now, to wit, comes the plaintiff, by his counsel, William A. Cook, and moves the court that the said defendants, each and every of them, be required by an order of this court to produce on the trial of this cause the following books and writings pertinent to the issue in said cause, viz:

1. All contracts, agreements, leases, and memoranda of arrangements between the said defendants and each and all of them or any of them relating to the operations and management of each and all of said roads or any of them "*inter sese*," existing on the 19th day of February, A. D. 1885, and immediately prior and subsequent thereto.

2. All contracts, agreements, leases, and memoranda of arrangements between the defendants, each and all of them or any of them, at the time and dates hereinbefore mentioned relating to the operation and management of each and all of said railroads or any of them as relates to the carrying or transportation of passengers, public officers, postal agents, clerks, or other employees of the U. S. over said railroads or any of them, and especially including such car-

22 rying and transportation and arrangement thereof between the city of Washington, District of Columbia, south and north, from the city of Alexandria, Va., to said city of Washing-

ton, D. C., and from Washington, D. C., to Charlotte, North Carolina, and return.

3. All contracts, agreements, leases, and memoranda of arrangements between the defendants and each and all of them or any of them relating to the operation and management of all of said roads or any of them at and during the time and dates hereinbefore mentioned as respects the carrying or transportation of passengers and freight over said roads or any of them, and according to which contracts, agreements, leases, and arrangements they furnish and supply any of the cars, engines, machinery, fuel, or other materials used on said roads or any of them, and by which said roads or either of them are authorized and required to furnish and supply any employees, including conductors, engineers, pilots, firemen, brakemen, or others in connection with the running and management of said roads or either of them.

23 4. All books, papers, records, contracts, agreements, memoranda of arrangements, appointments, assignments to duty of agents, servants, and employees, all orders or directions, either printed or written, and all messages, printed, written, or telegraphic, relating to the movement of trains addressed to the conductor, engineman, or other employees, signed by the superintendent of said roads or either of them at and about the time and dates hereinbefore mentioned, and especially between the points hereinbefore mentioned, viz., between Washington, D. C., and Alexandria, Va., and also from Washington, D. C., to Charlotte aforesaid, and from said Charlotte to Washington, D. C.

5. The time-table or tables of any and all of said roads during the time and dates hereinbefore mentioned, showing the time of the leaving of the trains of said roads or either of them from said city of Washington, D. C., to said city of Alexandria, Va., and to the city of Fredericksburg, Va., and from said cities of Alexandria and Fredericksburg, Va., to Washington, D. C., and especially

24 the time-table purporting to be the time-table of the Alexandria and Fredericksburg railroad and the Alexandria and Washington railroad, purporting to be signed by the general manager, general superintendent, and superintendent of any or either or all of said roads or a printed copy thereof; also the books of rules or directions, or a printed copy of the same, governing and controlling the starting and the running of the trains or cars on said roads or either of them, and especially between Washington, D. C., and Alexandria, Va., both north and south, on the said 19th day of February, 1885, and immediately prior and subsequent thereto.

6. Also all books, papers, contracts, accounts, leases, memoranda, and receipts or vouchers of said roads or either of them for and during the time and dates hereinbefore mentioned showing the expenditures of said companies or either of them, the plans and arrangements between themselves in the running and operations of said roads or either of them, and the proportions or rates of

25 profits or losses made, sustained, or expended or so agreed upon by said roads or either of them in and by the running,

operation, and management of said roads or either of them between said points, at and during the time and dates above mentioned.

7. Also all books, papers, contracts, leases, accounts, memoranda, pay-rolls, receipts for pay of employees at and during the times and dates hereinbefore mentioned by and between said roads or any of them, showing the arrangements and operations of what was designated in the advertisements entitled "The great Pennsylvania route to the Northwest and Southwest, double track, steel rails, splendid scenery, magnificent equipment, &c.," over the signatures of J. R. Wood, general passenger agent, and Charles E. Pugh, general manager, which advertisements were issued on or about November 19th, 1884, and were published in the "Evening Star" and other newspapers published in the city of Washington, District of Columbia, from that date until the 19th day of February,
26 1885, inclusive, and which said advertisements included notice of the running of cars and the carrying of passengers, both north and south, between the city of Washington, in the District of Columbia, and the city of Alexandria, in the State of Virginia, and along and over the locality and point where the accident, wrongs, and injuries mentioned in plaintiff's complaint occurred and were committed.

WILLIAM A. COOK,
Att'y for Pl'ff.

DISTRICT OF COLUMBIA, }
County of Washington, } ss:

Before me personally appeared Thomas W. Jones, who, being duly sworn according to law, deposes and says that he is the plaintiff in the foregoing-entitled cause; that he has read the foregoing application and knows the contents thereof; that the books, writings, and papers mentioned in said application and schedule are in the possession and under the control of the defendants and contain evidence pertinent to the issue in the case and necessary and important to him in the full and proper and just trial of said
27 cause, and contains matters which he is informed and believes cannot be properly and fully proven without their production.

THOMAS W. JONES.

Sworn and subscribed before me this 25 day of January, 1888.

R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

To Enoch Totten, att'y for defendant:

Please take notice that this motion will be called up for action of the court on Saturday, the 28th day of January, 1888.

WILLIAM A. COOK,
Att'y for Plaintiff.

Court Proceedings.

MONDAY, *January* 23, 1888.

Proceedings before 2d division, circuit, special term of the supreme court District of Columbia, commencing fourth Monday, January 23, 1888.

28 By order, Mr. Justice William M. Merrick presiding, the marshal of said District proclaims the said special term in session.

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SATURDAY, *January* 28, 1888.

Session resumed pursuant to adjournment. Present, presiding, Mr. Justice Wm. M. Merrick.

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JONES
vs.
PENNSYLVANIA RAILROAD *et al.*
} 26298. At Law. Cal. 52.

Now comes Wm. A. Cook, Esq., attorney for the plaintiff, and reads motion for production of certain books, documents, papers, advertisements, &c., alleged to be in possession of defendants, and asks to have the same considered. Whereupon the court orders the prayer of said motion to be entered overruled, which is hereby done accordingly.

29 *Motion for Inspection of Books & Papers. Filed Jan'y* 18, 1889.

In the Supreme Court of the District of Columbia.

THOS. W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY and Others.
} At Law. No. 26298.

And now come the attorneys for the plaintiff and move the court to require the defendants The Pennsylvania Railroad Company and The Baltimore and Potomac Railroad Company to produce the following books, papers, and documents for the inspection of the plaintiff's attorneys at such time and place as the court may fix, to wit: The order issued to the engineer of the freight train which left Washington on the evening of the 19th day of February, 1885, and collided with another train at Four Mile run, in Virginia, the same evening *on* night; also the book in which such order was recorded or registered; also the pay-rolls or the books or records showing the names of all men employed or paid by said defendants or
30 either of them, in whole or in part, in running, directing, or dispatching trains from Washington in any direction across

the Potomac river during the months of January and February, 1885.

W. A. COOK,
C. C. COLE,
Att'ys for Thomas W. Jones.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

The plaintiff, Thomas W. Jones, in the above-mentioned case, being duly sworn, says upon oath that he has read the foregoing motion and knows the contents thereof; that he is informed and believes that the men in charge and control of the two trains which collided as set forth in said motion were in the employ of one or both the defendants mentioned in said motion and paid, in whole or in part, by them; that plaintiff was injured by said collision, and this suit is prosecuted to recover damages for such injuries; that he is informed and
31 believes that the said defendants mentioned in said motion deny that they or either of them were or are responsible for the running of either of said trains. He is also informed and believes that an order was issued by the proper officer of one or both the said defendants to the engineer or conductor of the said freight train and recorded in a book kept at the depot or station of the defendant The Baltimore and Potomac Railroad Company, on 6th street, in this city, as set forth in said motion, and that upon the production of said order and book it will appear that the same was issued by the authority of one or both of said defendants mentioned in the motion. He is also informed and believes that both of said defendants kept at that time pay-rolls or other books or records in which they recorded the names of all persons in the employ of either, and that upon the production of said rolls or records it will appear that the men in control of both of said trains were in the
32 employ of one or both of the defendants mentioned in said motion at the time of the accident aforesaid and paid by them in whole or in part. Affiant is also informed and believes that the said books, papers, and records mentioned in said motion are still in the possession of the said defendants or one of them, and that the same contain important and material evidence in his behalf in support of his said action, and it is important and necessary that his attorneys should have opportunity to examine the same before trial, in order to properly prepare the case for trial.

THOMAS W. JONES.

Sworn and subscribed before me the 19th day of January, 1889.

R. J. MEIGS, *Clerk,*
By J. R. YOUNG,
Ass't Clerk.

Enoch Totten, Esq., attorney for defendants:

Please take notice that on Tuesday, the 22d day of January, 1889,

at 10 o'clock a. m. or as soon thereafter as counsel can be heard we will move the circuit court to grant the foregoing motion.

W. A. COOK,
C. C. COLE,
Att'ys for Pl'ff.

33 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a circuit court in and for said District, commencing the fourth Monday, it being the 28th day, of January, A. D. 1889.

MONDAY, *January 28th, A. D.* 1889.

By order of Chief Justice Edward F. Bingham, one of the justices of said supreme court, presiding, the court is opened, by proclamation of the marshal, pursuant to rule of court.

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SATURDAY, *February 23rd, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

THOMAS W. JONES, Pl't'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts. } At Law. No. 26298.

Upon hearing the plaintiff's motion for leave to inspect
34 books and documents in possession of defendants, it is considered that said motion be, and the same is hereby, overruled without prejudice.

Motion of Virginia Midland to Sever. Filed April 8, 1889.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENN. R. R. Co. *et al.* } At Law. 26298.

This day came The Virginia Midland Railway Company, one of the defendants in the said action, and moved the court to sever the said defendants in the said cause, so that the same should be separately tried against the said defendant V. M. Co., and for cause thereof the said defendant shows:

1. That it would be impossible to so adjust the introduction of evidence and argument of counsel as to enable the said Virginia Midland R'y Company to fairly present its case to the court & jury.

35 2. That the said company relies for its defense on mitigation of damages upon facts entirely different and in some points antagonistic to those which will be presented and are relied upon by its codefendants. The said Virginia Midland Company claims that its road terminated at Duke street, in Alexandria, and that the

accident happened at a spot called the Gauntlet, in Alexandria county, upon the road known as the Alexandria & Washington railroad, and that the Virginia Midland Company had no control over either of the colliding trains and was not, therefore, responsible for the said accident, whereas the said Virginia Midland Co. is informed that its codefendants will insist that one of the colliding trains was under the control & management of the said Virg. Mid. Company. To support these petitioners upon either side will compel the introduction of testimony which may be inadmissible against the plaintiff in the present form of the suit and yet essential to the defense or mitigation of damages so far as the Virg. Mid. Company is
36 concerned.

3. That as the plaintiff was a mail agent of the United States Government and as such was being transported in custody of his mail under a contract with the said Government, it will be claimed that the obligation of the railroads & his rights as against them arise out of and are modified by said contract. The Virginia Midland Company will then prove that its contract for the transportation of the mail and mail agents terminated in Alexandria, and with it terminated the relations between it and the plaintiff, and, the plaintiff having been injured upon another road and whilst he was being transported under another contract, that the said V. M. Company is not responsible for the injuries, and that its duties to the plaintiff and his rights stand upon a different state of facts from those which will be presented and relied on by its codefendants.

LINDEN KENT,
Counsel V. M. R'y.

37 MONDAY, *April 8th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

THOMAS W. JONES, Pl'ff, *vs.* THE PENNSYLVANIA RAILROAD CO., THE BALTIMORE & Potomac Railroad Co., The Virginia Midland Railway Co., The Alexandria & Fredericksburg Railway Co., & The Alexandria and Washington Railroad Company, Def'ts.	At Law. No. 26298. Cal. 31.

On hearing the motion of Mr. Kent, attorney for Virginia Midland Railway Company, that the plaintiff prosecute his suit against each of the defendants separately, it is considered that said motion be, and the same is hereby, overruled.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298. Cal. 31.

and Consolidated with

CHARLES T. STEWART
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26303. Cal. 32.

38 By consent of the several attorneys representing the several parties to the above-styled suit, it is this 8th day of April, 1889, ordered that said causes be, and they are hereby, consolidated and ordered to be tried before the same jury and at the same time, but the jury shall render a separate verdict in each case. The consent on behalf of the Virginia Midland is without prejudice to the exception of said defendant to the overruling of its motion to sever.

By the court:

E. F. BINGHAM,
Chief Justice.

THOMAS W. JONES, Pl'ff,
vs.
THE PENNSYLVANIA RAILROAD CO., THE Baltimore and Potomac Railroad Co., The Virginia Midland Railway Co., The Alexandria & Fredericksburg Railway Co., & The Alexandria & Washington Railroad Co., Def'ts, } At Law. No. 26298. Cal. 31.

and Consolidated with

CHARLES T. STEWART, Pl'ff,
vs.
THE PENNSYLVANIA RAILROAD CO., THE Baltimore & Potomac Railroad Co., The Virginia Midland Railway Co., Alexandria & Fredericksburg Railway Co., & The Alexandria & Washington Railroad Co., Def'ts. } At Law. No. 26303. Cal. 32.

39 Now come here as well the plaintiffs, by their attorneys, Messrs. Cook and Cole, as the defendants, by their attorneys, Messrs. Totten, Wells, Kent, and Payne, and a jury of good and lawful men of this District, to wit, F. P. May, Clarence S. Denham, Thomas A. Ritchie, H. J. Bradley, Franklin Rives, Timothy Gannon, John A. Power, Albert B. Clark, Edward McCauley, William S. Nason, Julien Sears, and Simon A. Hollahan, who, being duly sworn to try the matters of difference between the parties, are respited until the meeting of the court to-morrow morning.

TUESDAY, *April 9th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff, vs. PENNSYLVANIA R. R. Co. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff, vs. PENNSYLVANIA R. R. Co. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

40 Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

WEDNESDAY, *April 10th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff, vs. PENNSYLVANIA R. R. Co. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff, vs. PENNSYLVANIA R. R. Co. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are respited till the meeting of the court to-morrow morning.

41 THURSDAY, *April 11th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts,
Cal. 31.
At Law. No. 26298.

and

Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts.
Cal. —.
At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited till the meeting of the court to-morrow morning.

FRIDAY, *April 12th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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42 THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts,
Cal. 31.
At Law. No. 26298.

and

Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts.
Cal. 32.
At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited till the meeting of the court Monday morning next.

MONDAY, *April 15th,* A. D. 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts,
Cal. 31.
At Law. No. 26298.

and

Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts.
Cal. 32.
At Law. No. 26303.

43 Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited Friday last, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

TUESDAY, *April 16th*, A. D. 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

44 WEDNESDAY, *April 17th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further — of the case, are again respited until the meeting of the court to-morrow morning.

THURSDAY, *April 18th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

45 THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co., Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD Co., Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further

hearing of the case, are again respited until the meeting of the court to-morrow morning.

FRIDAY, *April 19th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

46 Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the *the* meeting of the court Monday morning next.

"And by consent and agreement of counsel representing the several parties to these suits it is this 19th day of April, 1889, ordered that the jury in charge of Arthur McDermott, one of the deputy marshals of the court, do visit the point where the collision in question in these cases occurred.

E. F. BINGHAM, *C. J.*"

MONDAY, *April 22d, A. D.* 1890.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts, } At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA R. R. CO. *et al.*, Def'ts. } At Law. No. 26303.

47 Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited Friday last, who, after a further hearing of the case, are again respited till the meeting of the court to-morrow morning.

TUESDAY, *April 23d*, 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298,

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited till the meeting of the court to-morrow morning.

48 WEDNESDAY, *April 24th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

THURSDAY, *April 25th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

49 THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA RAILROAD CO. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

FRIDAY, *April* 26, *A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, Def'ts. } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner
50 aforesaid and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court Monday morning next.

MONDAY, *April* 29*th*, *A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

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THOMAS W. JONES, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.*, } Cal. 31. At Law. No. 26298.

and Consolidated.

CHARLES T. STEWART, Pl'ff,
vs.
PENNSYLVANIA R. R. Co. *et al.* } Cal. 32. At Law. No. 26303.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after the case is given them in charge, retire to their room to consider of their verdict, with permission, if they agree during the adjournment of the court, after reducing their verdict to writing, signing, sealing
51 up, and delivering the same to their foreman, to separate until the meeting of the court Wednesday morning next

WEDNESDAY, *May* 1*st*, *A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

THOMAS W. JONES, Pl'ff, *vs.* THE PENNSYVANIA RAILROAD COMPANY, THE BALTIMORE and and Potomac Railroad Company, The Virginia Midland Railway Company, The Alexandria & Fredericksburg Railway Company, & The Alexandria & Washington Railroad Company.	Cal. 31. At Law. No. 26298.

Now again come here the parties aforesaid in manner aforesaid, and the same jury return into court and on their oath say they find said matters in favor of the plaintiff against the Pennsylvania Railroad Company, the Baltimore and Potomac Railroad Company, the Alexandria and Fredericksburg Railway Company, & the Alexandria & Washington Railroad Company, and assess his damages by reason of the premises at ten thousand dollars, and we also find in favor of the defendant The Virginia Midland Railway
52 Company. Therefore it is considered that the plaintiff recover against said defendants, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria & Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, $10,000, in manner and form aforesaid assessed, and $— for his costs of suit, and have execution thereof, and as to the defendant The Virginia Midland Railway Company the plaintiff take nothing by his suit, and that the Virginia Midland Railway Company go thereof without day and recover against the plaintiff $— for its costs of suit and have execution thereof.

53 FRIDAY, *May* 3, *A. D.* 1890.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

THOMAS W. JONES, Pl'ff, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company *et al.*, Def'ts.	At Law. No. 26298.

And now come The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Washington *and Washington* Railroad Company, defendants in the above cause, which was, by order of the court, consolidated with and tried with the case of Charles T. Stewart *vs.* the same defendants, being cause numbered 26303 at law, and move the court to set aside the verdict and grant a new trial on exceptions.

Undertaking on Appeal. Filed May 8, 1889.

In the Supreme Court of the District of Columbia, the — Day of ——, 1889.

54 THOMAS W. JONES, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railroad Company, *et al.* } At Law. No. 26298.

The defendants, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and the Alexandria and Washington Railroad Company, having appealed to the general term from the judgment pronounced herein on the 1st of May, 1889, in the circuit court, and John Cassels, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

THE PENNSYLVANIA RAILROAD COMPANY,
THE BALTIMORE & POTOMAC RAILROAD COMPANY,
THE ALEXANDRIA AND WASHINGTON RAILWAY COMPANY,
THE ALEXANDRIA & FREDERICKSBURG RAILWAY COMPANY, *Appellants,*
By ENOCH TOTTEN, *Att'y in Fact.*
JOHN CASSELS, *Surety.*

55 This undertaking is satisfactory.
May 8th, 1889.

—— ——, *Appellants.*
—— ——, *Surety.*

C. C. COLE,
Att'y for Pl'ff.

Approved.
May 8, 1889.

E. F. BINGHAM, *C. J.*

Objections and Protest of Attorneys for Plaintiffs to and against the Signing of Bills of Exceptions in said Causes, &c. Filed June 25, 1889.

Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PA. R. R. Co. *et al.*, } Law. No. 26298.

and

CHARLES T. STEWART
vs.
THE PA. R. R. Co. *et al.* }

Notice to settle exceptions.

Please take notice that on Tuesday next, the 25th day of June, 1889, on the opening of court on that day or as soon thereafter as counsel can be heard, we shall ask Hon. Edward F. Bing-
56 ham, chief justice, who presided at the trial of the above causes (consolidated), to settle the bills of exceptions in behalf of all the defendants (except the Virginia Midland Railway Company) in the above causes, which bills of exceptions are submitted by us to you this day.

June 20, 1889.

ENOCH TOTTEN,
H. H. WELLS,
For said Defendants.

To Wm. A. Cook, C. C. Cole, for pl't'fs.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298.

and

CHARLES T. STEWART
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26303.

57 And now come the attorneys for the plaintiffs in the above-entitled cause and in response to the notice served upon them on the 20th day of June, 1889, by the attorneys for the defendants, attached hereto, that they would move Hon. Edward F. Bingham, chief justice of said court, on the 25th day of June, 1889, to settle bills of exceptions in said causes and object to the settling or signing of the bills of exceptions submitted with said notice or any bills

of exceptions whatever in said causes or either of them on the following grounds, to wit:

First. Because the January term, 1889, of said court, at which said cases were tried, has been finally adjourned without day.

Second. Because no steps whatever were taken by the attorneys for the defendants or either of them to have said bills of exceptions settled or signed during the said term at which said causes were tried, although the verdict was rendered on the 1st day of May, 1889, and the said term did not expire until the 11th day of May, 1889, and by said inaction said defendants waived and lost any
58 right they may have had to have said bills of exceptions settled or signed.

Third. Because the notice hereinbefore mentioned was the first and only notice served upon or given to the attorneys for the plaintiffs of the intention of defendants' attorneys to apply to have bills of exceptions settled or signed in said causes or either of them.

Fourth. Because the term of the court at which said causes were tried expired by limitation and was finally adjourned without day on the 11th day of May, 1889, and the said chief justice has now no power, jurisdiction, or authority to settle or sign bills of exceptions in said causes or either of them.

Fifth. Because the term of the court at which said causes were tried has expired and has been adjourned without day and was not prolonged by adjournment for the purpose of settling or signing bills of exceptions in said causes by any valid, proper, or binding order for that purpose.

Sixth. Because during the term at which said causes were
59 tried the defendants' attorneys did not prepare and submit to or leave with the attorneys for the plaintiffs or either of them any bills or bill of exceptions proposed by them to be settled in said causes, nor did the former give the latter, during said term, any notice of their intention to apply to the justice who presided at the said trial to settle or sign any bill or bills of exceptions in said causes or of their intention to apply to the court for an order prolonging said term by adjournment for such purpose.

Six and one-half (6½.) Because no valid motion for a new trial was made during the term at which said causes were tried in either of said causes. The motion which was made for a new trial on exceptions is too general and vague and not in conformity to the rules of the court and invalid, and no notice was given to attorneys for plaintiffs of the filing of said motion or that the same would be called to the attention of the court.

Seventh. That no motion was made during said term at which said causes were tried nor has any since been made for a
60 new trial of said causes or either of them upon bills of exceptions, and the time within which such motion could be made or filed expired long before the submission of said bills of exceptions and the giving of said notice to the attorneys for the plaintiffs.

Eighth. There has been no appeal by defendants or either of them from any judgment of the circuit court overruling a motion

for a new trial in said causes or either of them or from the judgment for money in favor of plaintiffs against said defendants in said causes or either of them, and the time within which such an appeal could be taken expired long prior to the submission of said bills of exceptions or the giving of said notice by attorneys for the defendants to the attorneys for plaintiffs.

Ninth. There is no motion for a new trial or appeal pending in either of said causes, and the time within which either could be filed or taken expired long before the submission of said bills of exceptions and the giving of said notice by attorneys for de-
61 fendant- to the attorneys for plaintiffs, and the alleged rulings of the court contained in said proposed bills of exceptions can only be reviewed by means of such motion or appeal.

Tenth. The rulings of the court and the tendency of the evidence which took place and was introduced at the trial of said causes are not truly or accurately set forth in said proposed bills of exceptions.

For the foregoing and other reasons apparent in the record of said causes the attorneys for the plaintiffs object to and protest against the settling or signing of any bills of exceptions in said causes or either of them.

W. A. COOK,
C. C. COLE,
Attorneys for Plaintiffs.

Motion of Virginia Midland R'w'y Co. to Amend Record. Filed July 5, 1889.

In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY and Others. } At Law. No. 26298.

62 And now comes the defendant The Virginia Midland Railway Company and moves the court to amend the record in this cause by recording now for then the verdict rendered by the jury in this cause in favor of said defendant on the 1st day of May, 1889, by adding to the verdict as then recorded immediately after the words "ten thousand dollars" the following words, which were then found and announced in open court by the said jury as a part of their verdict in said cause, the same having been inadvertently omitted by the clerk in recording said verdict, to wit, "and we also find for the defendant The Virginia Midland Railway Company."

LINDEN KENT,
Att'y for Va. Mid. R'y.

We consent to the amendment of the record as prayed herein.

Linden Kent, being duly sworn, states that a copy of the within motion was duly served on Enoch Totten, Esq., counsel for the defendants other than the Virginia Midland Railway Co., who replied

that he did not care to be present at the hearing of the motion
63 and had no objection to urge against the granting of the same.

LINDEN KENT.

Subscribed and sworn to before me this 13th day of July, 1889.
R. J. MEIGS, *Clerk*,
By J. JAY CAMP,
Ass't Clerk.

We waive notice of this motion on behalf of pl'ffs.
July 3, '89.

C. C. COLE,
Att'y for Pl'ffs.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the second Monday, it being the thirteenth day, of May, A. D. 1889.

MONDAY, *May 13th, A. D.* 1889.

By order of Chief Justice Edward F. Bingham, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal pursuant to rule of court.

64 SATURDAY, *July 13th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

THOMAS W. JONES, Pl'ff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and Others, Def'ts. } At Law. No. 26298.

On motion of the attorneys for the Virginia Midland Railway Company, it appearing that due notice of such motion has been given to the attorneys for the other defendants as well as to the attorneys for the plaintiffs, and it further appearing to the undersigned, who presided at the trial of said cause, from his minutes, and the same being still fresh in his recollection, and from the written verdict signed by the jurors and filed in the papers of this cause, that
65 on the 1st day of May, 1889, when the jury rendered its verdict in said cause, they found as a part thereof in favor of the said defendant, The Virginia Midland Railway Company, in words following, to wit: "And we also find in favor of the defendant, The Virginia Midland Railway Company;" and it further appearing from the inspection of the record of said verdict that the clerk omitted to record the aforesaid quoted words, it is, this 13th day of July, 1889, ordered by the court that the clerk of

this court do now record the said quoted words in the record of said verdict immediately after the words "two thousand dollars" occurring therein, to have the same force and effect as if the same had been recorded on the said 1st day of May, 1889, with the residue of said verdict.

E. F. BINGHAM,
Chief Justice.

66 *Motion for New Trial on Bill of Exceptions. Filed July* 15, 1889.

Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } Law. No. 26298.

And now come the said defendants, The Pennsylvania Railroad Company, The Baltimore & Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, and move the court on the bill of exceptions this day filed to set aside the verdict and judgment in this cause and to grant a new trial therein.

ENOCH TOTTEN,
For said Defendants.

67 In the Supreme Court of the District of Columbia, July 15th, 1889.

THOMAS W. JONES, Pl't'ff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.*, Def'ts. } At Law. No. 26298.

JULY 15, 1889.

Now again come here the said defendants, by their said attorneys, and tender to the court here their bills of exceptions to the rulings of the court on the trial of this case, and pray that they may be duly signed, sealed, and made a part of the record now for then, which is done accordingly.

"And now come the said defendants, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, and move the court, on the bills of exceptions this day filed, to set aside the verdict
68 and judgment in this cause and to grant a new trial.

"ENOCH TOTTEN,
"*For said Defendants.*"

69 In the Supreme Court of the District of Columbia.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE AND POTOMAC RAILROAD COMPANY, The Virginia Midland Railway, The Alexandria and Fredericksburg Railway Company, and The Alexandria & Washington Railroad Company.
} Law. No. 26298.

Bill of Exceptions. Filed July 15, 1889.

Be it remembered that on the 9th of April, 1889, the above-entitled cause of Jones *vs.* the said defendants being called for trial, it was, on motion of the counsel, and in pursuance of a stipulation signed by all the counsel in both causes, ordered, that the said suit be consolidated with the above-entitled cause of Stewart against the said defendants, and both said causes were so consolidated and ordered to be tried and were tried together before the same jury, separate verdicts to be found, and were found in each case.

70 On the trial of said causes the plaintiffs therein, to maintain the issues on their part joined, introduced evidence tending to show that the said plaintiffs, in their own behalf, were each of them employed in the railway mail service of the United States as postal clerks on and for a long time before, the 19th day of February, 1885, and as such, on that day, had charge of the United States mail being transported from Charlotte, North Carolina, to Washington, District of Columbia, on a train and in a car belonging to the defendant, The Virginia Midland Railway Company, which arrived at Alexandria, Virginia, on the night of the accident in question, to wit, on said 19th of February, 1885, and departed therefrom about twenty minutes after the schedule time for leaving that place by that train; that the order for the train to start was given by one Bennett, a conductor, or pilot, to one Bruce, who was the engineman who ran the engine from Alexandria north, drawing said passenger train on said night.

The testimony in the cause given by the plaintiffs tended to show that the Virginia Midland Railway Company's road terminated on the north at Alexandria; that the Alexandria and Washington railroad began at Alexandria on the south, and extended north from Alexandria to the south end of Long bridge; that the Alexandria and Fredericksburg railway's road began at Quantico, Virginia, and extended north to Alexandria; that the Baltimore and Potomac railroad began at the south end of Long bridge, on the Potomac river, and extended to the city of Washington, and thence north to Baltimore, Maryland.

And then ROBERT A. PARKE, a witness called by and on behalf of the plaintiffs, having been first duly sworn, was examined
71 by Mr. COLE as follows:

Q. Mr. Parke, you live in Washington?
A. Yes, sir.

Q. What is your occupation?

A. I have charge of the passenger department of the Pennsylvania railroad in the southeastern district.

Q. You have charge of the passenger department?

A. Of the passenger department; yes, sir.

Q. Of the Pennsylvania road for the southeastern district?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since 1883.

Q. Where do you have your office?

A. At the Baltimore and Potomac station.

Q. What have you to do with the tickets?

A. In what way? Nothing whatever in the collection of tickets or in the making of rates; nothing to do whatever with the ticket department.

Q. Have you anything to do with the issuing of tickets?

A. No, sir.

Q. And nothing to do with the form of them?

A. No, sir.

Q. What are your duties?

A. Looking after tickets representation, and seeing that we have proper representation, and soliciting business generally, and attending to such other matters as come directly from the Philadelphia office.

Q. From what authority do you derive your appointment to that position?

A. Directly from the second vice-president of the Pennsylvania road.

Q. Who is he?

A. Mr. Frank Thompson.

72 Q. The appointment was made by Mr. Thompson? Where does he reside?

A. In Philadelphia.

Q. How far south does the southern system extend, the southern system of the Pennsylvania road?

A. The Pennsylvania railroad really does not extend south at all. The Pennsylvania road proper, of which I am the representative, extends from Philadelphia to Pittsburg.

Q. That is the main line?

A. Yes, sir; that is the main line.

Q. What line south do they control?

A. The Pennsylvania road?

Q. Yes, sir.

A. I do not know that they control any.

Q. You have no knowledge upon that subject?

A. No, sir.

Q. What line do you act for here in your capacity?

A. The Pennsylvania railroad, and I am paid by the Pennsylvania road.

Q. You say you have nothing to do with the issuing of tickets?

A. No, sir.

Q. You simply look after making rates south?

A. Not in making rates south; I am looking after the business that is to go more particularly to the west. The Pennsylvania railroad has an office here; the Pennsylvania railroad office proper, and issue Pennsylvania railroad tickets in that office at 13th street and the avenue; but my business is particularly the solicitation and looking after the business to the west.

Q. You have nothing to do with the business south?

A. Nothing more than the ticket representation and to see that the Pennsylvania railroad is represented in every ticket representation of these southern lines for eastern points and western points and northern points.

73 Q. What do you mean by saying that you look after the ticket representation?

A. You take the number of competitive lines to Chicago and competitive lines to the west thereof, and see that the Pennsylvania railroad proper is represented in their tickets in that office. Some office might not have a ticket to issue for the Pennsylvania road, and if it did not have representation in this particular office, the party would be ticketed through the other way, over the Baltimore & Ohio or the Chesapeake & Ohio. The party would be ticketed the other way.

Q. Then it is your business to see that the Pennsylvania railroad tickets are in all these offices?

A. Yes, sir.

Q. To what points are tickets sold by the Pennsylvania Company here?

A. To all points West.

Q. And to what points South?

A. Well, they take the Jacksonville point, and take the prominent points to the east of Atlanta, that is, going by what is called the Alexandria and Fredericksburg road to Quantico and around by the Richmond route; but nothing by the Piedmont Air Line.

Q. Do they sell tickets from here to Quantico?

A. Yes, sir.

Q. And from here to Alexandria?

A. Not at the Pennsylvania railroad office; but at the office of the Baltimore & Potomac road they do. There are no local tickets sold on the Alexandria & Fredericksburg road at all at our 13th-St. office.

Q. But local tickets are sold at the Baltimore & Potomac depot?

A. Yes, sir.

Q. They there sell tickets to Alexandria and tickets to Quantico?

A. Yes, sir.

74 Q. Have you any tickets in your possession on such as were sold by the Pennsylvania Railroad Company between here and Alexandria in February, 1885?

A. No, sir.

Mr. TOTTEN: He says there were none sold.

Mr. COLE: He says that they were sold at the Baltimore & Potomac office at 13th street.

Mr. TOTTEN: He did not say that the Pennsylvania railroad sold them, did you?

The WITNESS: No, sir; not the Pennsylvania road. At the office at 13th street and the Avenue there are no local tickets sold, at all.

By Mr. COLE:

Q. I understand that the Pennsylvania Company have an office at the Baltimore & Potomac depot?

A. A ticket office?

Q. Yes.

A. No, sir.

Q. Don't they sell tickets there?

A. Yes, sir; they sell tickets there but it is not a Pennsylvania railroad ticket office.

Q. But they sell Pennsylvania railroad tickets there?

A. Yes, sir; to the West.

Q. They sell Pennsylvania railroad tickets from Washington to Alexandria at the Baltimore & Potomac; don't they?

A. No, sir; they don't sell Pennsylvania railroad tickets there. They sell Alexandria & Fredericksburg tickets.

Q. The Pennsylvania Railroad Company sell those tickets?

A. No, sir; it is the Baltimore & Potomac office.

75 Q. Don't the Pennsylvania Company sell tickets there?

A. No, sir; it is not a Pennsylvania railroad office.

Q. Could you get me one of the tickets such as are sold from that office or such as were sold in February, 1885, and let us see it?

A. Yes, sir; I think so.

Q. Such a ticket as was sold from there to Alexandria.

A. A local ticket?

Q. Yes, sir; sold at the B. & P. office for Alexandria.

A. During what month and what year?

Q. During the month of February, 1885.

A. Yes, sir.

Mr. TOTTEN: You need not do that unless you want to. It is not your business to be hunting up testimony for these gentlemen.

By Mr. COLE:

Q. Who is the general passenger agent of the Pennsylvania Railroad Company?

A. James R. Wood.

Q. And who is the general manager of that company?

A. Charles E. Peugh.

Q. Do you know anything about this advertisement in the paper: did you have anything to do with putting it in?

A. No, sir.

Q. You had nothing to do with that?

A. No, sir.

Q. And know nothing of it?
A. I know nothing of it.

76 Cross-examination.

By Mr. TOTTEN:

X Q. How long have you been engaged in railroading?
A. Since 1874.
X Q. You say this ticket office at the Baltimore & Potomac depot is not a Pennsylvania office?
A. No, sir.
X Q. What office is it?
A. Baltimore & Potomac. I think the appointment is a Baltimore & Potomac railroad appointment; at least it was when I had charge of the office.
X Q. Do they sell tickets at that office over any other roads except those connected with the Baltimore & Potomac Company?
A. Yes, sir.
X Q. Is that a general ticket office?
A. No, sir.
X Q. It is not?
A. No, sir.
X Q. I mean as to selling tickets generally? Can you buy a ticket there for San Francisco?
A. Do you mean a different issue on different lines?
X Q. For instance, can you buy a ticket there to San Francisco?
A. Under this arrangement with the Virginia Midland?
X Q. I don't speak of that. Can you buy a ticket from there to Chicago?
A. Yes, sir; and to all points west.
X Q. And to San Francisco?
A. Yes, sir.
X Q. And to Boston?
A. Yes, sir.
X Q. And to New Orleans?
A. Yes, sir.
77 X Q. And almost anywhere in the United States?
A. Yes, sir.
X Q. Can you sell tickets there over the Chicago, Burlington and Quincy railroad?
A. To what point?
X Q. To Denver.
A. Yes, sir.
X Q. And from Chicago by the Rock Island road?
A. By the Chicago, Burlington and Quincy.
X Q. Yes.
A. I think not.
X Q. You sell tickets over the Milwaukee and St. Paul road?
A. Yes, sir; all lines running out of Chicago; but I don't know whether we could sell one to Rock Island.

By Mr. WELLS:

X Q. I mean by the Rock Island and Pacific road.
A. Yes, sir.

By Mr. TOTTEN:

X Q. Is it customary and usual in ticket offices to sell tickets everywhere, over all sorts of railroads?
A. Yes, sir.
X Q. There is an almost universal exchange of authority to sell tickets?
A. Yes, sir.
X Q. And a ticket issued by one railroad company is honored by the other?
A. A coupon over that particular road is honored by the other.
X Q. And the settlements are made afterwards?
A. Yes, sir.
X Q. You say that James R. Wood is the general passenger agent of the Pennsylvania Railroad Company?
A. Yes, sir.
78 X Q. Is he the general passenger agent of any other company?
A. Yes, sir.
X Q. Who is the passenger agent of the Alexandria & Fredericksburg?
A. James R. Wood.
X Q. Who is the passenger agent of the Alexandria & Washington railroad?
A. James R. Wood.
X Q. Who of the Baltimore & Potomac?
A. The same.
X Q. And of what other road?
A. Of the Philadelphia, Wilmington & Baltimore, the New Jersey & Camden, the Atlantic & West Jersey, and the Northern Central.
X Q. And of the Pittsburgh, Fort Wayne & Chicago?
A. No, sir; nothing west of Pittsburgh or Erie.
X Q. Mr. Pugh is the general manager of that road?
A. He is the general manager of the Pennsylvania railroad, the Philadelphia, Wilmington & Baltimore, the Baltimore & Potomas, the Northern Central, the Philadelphia & Erie, the Alexandria & Fredericksburg, and the Alexandria & Washington.
X Q. You say that the Pennsylvania Railroad Company, the corporation called the Pennsylvania Railroad Company, operates the line and extends from Philadelphia to Pittsburg?
A. Yes, sir; and the branches.
X Q. What railroad connects this side of Philadelphia?
A. Do you mean by their line?
X Q. By any line.
A. The Baltimore & Potomac, the Philadelphia, Wilmington &

Baltimore and also the Baltimore & Potomac and the Northern Central, with the main line of the Pennsylvania road.

X Q. That would take you by way of Harrisburg?

79 A. Yes, sir; by way of Harrisburg and by way of York or Columbia.

X Q. Is Pugh the general manager of the Alexandria & Fredericksburg, or did I ask you that?

A. You did, and I gave you the information.

X Q. You answered that question?

A. Yes, sir; Mr. Pugh is the general manager of the Alexandria & Fredericksburg and the Alexandria & Washington.

X Q. And of the Baltimore & Potomac?

A. Yes, sir.

Redirect examination.

By Mr. COLE:

Q. Mr. Wood is the general passenger agent of all these defendants here except the Virginia Midland?

A. I don't quite understand your question about defendants?

Q. The defendants here are the Pennsylvania Railroad Company, the Baltimore & Potomac Railroad Company, the Alexandria & Fredericksburg railway, and the Alexandria and Washington Railroad Company. Mr. Wood is the general passenger agent of all those companies?

A. He is the general passenger agent for each of those companies.

Q. He is not the general passenger agent of the Virginia Midland?

A. No.

Q. And Mr. Pugh is the general manager of all these railroads that I have first mentioned?

A. Yes, sir.

Q. You say that this office and the man who sells these tickets—the ticket-seller, or whatever you call him—at the Baltimore & Potomac railroad office is a Baltimore & Potomac man and a Baltimore & Potomac office?

A. I am not quite positive about that. It was when I had charge of the office.

80 Q. How long ago was that?

A. In 1882. I had charge of the office from 1877 to 1882.

Q. You have no connection with the Baltimore & Potomac railroad now, so far as your duty is concerned?

A. No, sir.

Q. Your office is at the Baltimore & Potomac station?

A. Yes, sir.

Q. Your office is at the Baltimore & Potomac station?

A. Yes, sir; my office is at the Baltimore & Potomac station.

The COURT: I thought he said it was at 13th street and the Avenue.

By Mr. COLE:

Q. The office of the Pennsylvania Company is at 13th street?

A. Yes, sir.

Q. And your office where you transact your business was at the Baltimore & Potomac station?

A. Yes, sir.

Q. But you are in the employ of the Pennsylvania Company and not in the employ of the Baltimore & Potomac Company?

A. No, sir; I am in the employ of the Pennsylvania Railroad Company.

Q. Ticket—agent, is that your office?

A. No, sir; passenger agent.

Q. Of the Pennsylvania Company?

A. Not of the Pennsylvania Company; of the Pennsylvania Railroad Company. The Pennsylvania Company has lines west of Pittsburg to Erie.

Q. There is another corporation by that name?

A. Yes, sir.

81 Q. Does not your duty require you to care for the interests of the Baltimore & Potomac Railroad Company in these ticket arrangements? Don't you care for those as much as you do for the Pennsylvania Railroad Company?

A. Yes, sir.

Q. And you care for the interests of the Alexandria & Fredericksburg, don't you?

A. Yes, sir.

Q. You do not care for the Virginia Midland?

A. No, sir.

The plaintiffs also gave testimony tending to show that there was an existing contract arrangement by which the defendant, The Virginia Midland Railway Company ran its passenger trains from Alexandria, Virginia, over the tracks of the Alex. and Fredericksburg Company, over the Alexandria and Washington railroad tracks, and the tracks of the defendant, The Baltimore and Potomac Railroad Company, into the city of Washington, and by which the Alexandria and Fredericksburg Railway Company ran its trains over the same tracks between Alexandria and Washington.

That the track of the Alexandria and Washington railroad was, in general, a double track, with the exception that it was a single track from Duke street to St. Asaph Junction, and from St. Asaph Junction it was a double track to the south end of the gauntlet, the place of the accident, and from the north end of the gauntlet to the Long bridge it was a double track; that the gauntlet extended through the Four Mile Run arch, and a short distance north and south from the respective north and south faces of said arch.

Be it further remembered that the plaintiff Jones, having been called as a witness, testified on behalf of the plaintiffs to maintain the issues on their part joined, was asked the following question by plaintiff:

82 "Now, Mr. Jones, say for a period of three months prior to this accident, on all trains which left Washington which ran over the Virginia Midland road in going to Charlotte, and on all trains on which you returned to Washington, the employees of what company were in charge of those trains going both ways?"

To which question at the time it was asked the counsel for all the defendants in both suits, except the Virginia Midland railway objected, which objection was by the court overruled, whereupon the witness replied to said question: "The Baltimore and Potomac," to which answer the said defendants at the time objected, but said objection was overruled by the court; to which rulings of the court and each of them, the said counsel for the said defendants then and there excepted, and the said exception was noted at the time on the minutes of the court, and the said counsel for the said defendants pray the court to sign and seal this their first bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' first bill of exceptions, which is made part hereof, the plaintiffs offered in support of the issues joined on their part, Charles T. Stewart, one of the plaintiffs, as a witness, who having given testimony tending to show that he was a postal clerk and in the postal car of the Virginia Midland train at the time of the collision, was asked by the plaintiffs: "Do you know who was in charge of that train?" and answered: "Yes, sir; the pilot Bennett and the conductor Wilkins." To which question and answer the counsel for all the defendants in both suits except the Virginia Midland Railway Company objected, which objection was by the court overruled, to which ruling
83 of the court the said counsel for the said defendants then and there excepted, and the exception was at the time noted on the minutes of the court, and the counsel for the said defendants prays the court to sign and seal this their second bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

And thereupon after sig-ing and sealing the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs gave testimony tending to show that when the north-bound passenger train, on which the plaintiffs were at the time of the accident left Alexandria that night—the night of the 19th of February, 1885—the agents of the defendant, The Virginia Midland Railway Company, surrendered, or turned over the train to the pilot or conductor of the Alexandria and Washington Railroad Company, said Bennett, but that said Bennett gave no orders in respect to the moving of that train after the train started north from Alexandria. That on the same evening, and between nine and ten o'clock a train called the Alexandria and Fredericksburg railway fast freight, left

Washington going south to Quantico; that the north-bound passenger train on which the plaintiffs were riding, while passing over the gauntlet and when the engine of that train had reached a point about fifty feet north of the north face of the arch, over the gauntlet, collided with the said fast freight train, bound south, by which both trains were wrecked, the engines destroyed and the plaintiffs each of them received serious and severe bodily injuries from which they were both confined to their rooms and suffered great pain, and from which they have not yet entirely recovered, and for the damages suffered thereby the said suits were brought.

The plaintiffs also gave testimony tending to show that in passing through the gauntlet, which is the point where the Alexandria and Washington road passes through a stone arch, which supported the Alexandria canal, and wide enough for two tracks,
84 but not wide enough for two trains to pass each other, and where the two tracks converged and interlaced one with the other, so as to give each, the east and west track, a separate track of its own, each having two rails, the said north-bound passenger train, because it was a passenger train and bound north, had the exclusive right of way through the gauntlet, and that it was the duty of the fast freight, because it was a freight train and bound south, to have waited for and kept out of the way of the north-bound passenger train under the rules and regulations prescribed for the running of trains over that road between Alexandria and Washington, in respect to which rules the plaintiffs gave evidence tending to show that the same were provided and furnished to trainmen and are Schedule No. 3; and the plaintiffs read the same in evidence, which schedule and regulation were in the words and figures following, to wit:

(Here follows time-table marked p. 85.)

85 *Extract from Book of Rules.*

Signals.

18. Conductors, enginemen, firemen, brakemen, station agents, telegraph operators, track foremen, switchmen, road and bridge watchmen, and all other employees having to use signals, must provide themselves with them, keep them in good order, and always ready for immediate use.

19. Flags of the proper color must be used by day, and lamps of the proper color by night, or when from fog or other cause, the day signals cannot be clearly seen.

20. Red signifies danger, and is a signal to stop.

21. Green signifies caution, and is a signal to go slowly.

22. White signifies safety, and is a signal to go on.

23. Green and white is a signal to be used to stop trains at flag stations.

24. Blue is a signal to be used by car inspectors.

25. An explosive cap or torpedo clamped to the top of the rail, is

a signal to be used in addition to the regular signals, when from fog or other cause, other signals cannot be clearly seen or relied upon.

The explosion of one cap, is a signal to stop immediately:—the explosion of two caps is a signal to reduce speed immediately, and look out for a danger signal.

26. A fusee is an extra danger signal, to be lighted and placed on the track at night, in cases of accident or emergency.

A train finding a fusee burning upon the track must come to a stop, and not proceed until it is burned out.

27. A flag or lamp swung across the track, a hat, or any object wa-ved violently by any person on the track, signifies danger, and is a signal to stop.

Train signals.

28. All trains are designated as regular, or extra. Regular trains are those represented on the time-table. Extra trains are those not represented on the time-table. An engine without cars, in service on the road, will be considered a train.

29. Each train, while running, must display two green flags by day, and two green lights by night, one on each side of the rear of the train, as markers, to indicate the rear of the train. Yard engines will not display markers.

30. Each train, running after sunset, or when obscured by fog or other cause, must display the head-light in front, and two red lights in the rear. Yard engines must display two green lights instead of red, except when provided with a head-light on both front and rear.

31. Each passenger train, while running, must have a bell cord attached to the signal bell of the engine, passing through or over the entire length, and secured to the end of the train.

32. Two green flags by day, and two green lights by night, displayed in the places provided for that purpose on the front of an engine, denote that the train is followed by another train, running on the same schedule, and entitled to the same rights, as the train carrying the signals.

33. Two white flags by day, and two white lights by night, displayed in the places provided for that purpose on the front
86 of an engine, denote that the train is an extra. These signals must be displayed by all extra trains.

34. A blue flag by day, and a blue light by night, placed on the end of a car, denotes that car inspectors are at work under the car or train.

The car or train thus protected must not be coupled to or moved, until the blue signal is removed by the car inspectors.

Whistle signals.

35. One long blast of the whistle, is a signal for approaching stations, railroad crossings, and junctions. (Thus ———)

36. One short blast of the whistle, is a signal to apply the brakes —stop. (Thus —)

37. Two long blasts of the whistle, is a signal to throw off the brakes. (Thus —— ——)

38. Two short blasts of the whistle, is an answer to conductor's signal to stop at the next station. (Thus — —)

39. Three long blasts of the whistle, is a signal that the train has parted. (Thus —— —— ——)

40. Three short blasts of the whistle, when the train is standing, is a signal that the train will back. (Thus — — —)

41. Three short blasts of the whistle, when the train is running, is a signal to be given by passenger trains on single track, when displaying signals for a following train, to call the attention of trains they pass to the signals. (Thus — — —)

42. Four long blasts of the whistle, is a signal to call in the flagman or signalman. (Thus —— —— —— ——)

43. Four short blasts of the whistle, is the engineman's call for signals from switchmen, watchmen, and trainmen. (Thus — — — —)

44. Two long followed by two short blasts of the whistle, is a signal for approaching road-crossings at grade. (Thus —— —— — —)

45. Five short blasts of the whistle, is a signal to the flagman to go back and protect the rear of the train. (Thus — — — — —)

46. A succession of short blasts of the whistle, is an alarm for persons or cattle on the track, and calls the attention of the trainmen to danger ahead.

Bell-cord signals.

47. One tap of the signal bell when the train is standing, is a notice to start.

48. Two taps of the signal bell when the train is running, is a notice to stop at once.

49. Two taps of the signal bell when the train is standing, is a notice to call in the flagman.

50. Three taps of the signal bell when the train is running, is a notice to stop at the next station.

51. Three taps of the signal bell when the train is standing, is a notice to back the train.

52. Four taps of the signal bell when the train is running, is a notice to reduce speed.

Lamp signals.

53. A lamp swung across the track, is a signal to stop,

54. A lamp raised and lowered vertically, is a signal to move ahead.

87 55. A lamp swung vertically in a circle across the track when the train is standing, is a signal to move back.

56. A lamp swung vertically in a circle across the track, when the train is running, is a signal that the train has parted.

57. A flag or the hand, moved in any of the directions given above, will indicate the same signal as given by lamp.

Fixed signals.

58. Fixed signals are placed at junctions, railroad crossings, stations, and other points that require special protection; they consist of home, distant, and starting signals; special regulations will be issued indicating their position and use.

Rules governing the use of signals.

59. A signal imperfectly displayed, or the absence of a signal at a place where a signal is usually shown, must be regarded as a danger signal, and the fact reported to the superintendent.

60. The unnecessary use of the whistle is prohibited; when shifting at stations and in yards, the engine bell should be wrung, and the whistle used only when absolutely necessary to prevent accident.

61. The whistle must not be sounded while passing a passenger train, except in cases of emergency or danger.

62. When a danger signal (except fixed signals and the block signal at block stations), is displayed to stop a train, it must be acknowledged as per rule No. 46.

63. The engine bell must be rung before starting a train, and when running through tunnels, and the streets of towns or cities.

64. The engine bell must be rung for a quarter of a mile before reaching every road crossing at grade, and until it is passed; and the whistle must be sounded at all whistle posts.

65. When one tap of the signal bell is heard while a train is running, the engineman must immediately ascertain if the train has parted, and if so, be governed by rule No. 100.

66. When two or more engines are coupled in a train, the leading engine only shall display the signals provided for in rules Nos. 32 and 33.

67. One flag or light displayed on the front of an engine, will be regarded the same as if two were displayed; but enginemen and firemen will be held responsible for the proper display of all signals.

68. When an engine is run backward, the signals provided for in rules Nos. 32 and 33, must be displayed in the same position on the engine as when it is run forward.

69. When an engine is run backward without cars, or when cars are pushed ahead of an engine running backward, the markers and red light must be placed on the bumper of the engine, and not on the tender.

70. A white light must be displayed on the forward end of a train at night, or when obscured by fog or other cause, when it is run backward, or when cars are pushed ahead of the engine. (See rule No. 101.)

71. When a train turns out to allow another train to pass, the red lights must be removed and green displayed, as soon as the track is clear for the following train; but the red must be displayed before crossing back to its own track.

88 72. The combined green and white signal is to be used only to stop trains at the flag stations designated on the time-table. When it is necessary to stop a train at a point that is not a flag station for that train, a red signal must be used.

73. Switch signals will show white when the switch is set for the main track, and red when set for the siding, crossing, or junction track.

74. Explosive caps must not be placed near stations or road crossings, where persons are liable to be injured by them.

75. All signals must be used strictly in accordance with the rules, and trainmen must keep a constant lookout for signals.

Train rules.

76. All trains running on double track, must keep to the right. Trains will run on four tracks under special regulations.

77. All regular trains will be classified on the time-table. A train of inferior class must in all cases keep out of the way of a train of superior class.

78. On single track, all trains in one direction (to be specified on the time-table), will have the absolute right of track, over trains of the same or inferior class, running in the opposite direction. Trains not having right of track, must keep entirely out of the way of trains of the same or superior class, running in the opposite direction.

79. When trains of the same class meet on single track, the train not having right of track must take the siding (except when it cannot enter without backing), and be clear of the main track before the leaving time of the opposing train.

80. When a freight train meets a passenger train on single track, the freight train must take the siding, and clear the passenger train ten minutes.

81. A train of inferior class must keep ten minutes off the time of a train of superior class following it.

82. Extra trains must clear the time of regular trains ten minutes.

83. A train must not leave a station to follow a passenger train, until ten minutes after the departure of the passenger train.

84. Passenger trains running in the same direction, must keep not less than ten minutes apart.

85. Freight trains following each other must keep not less than five minutes apart, except in closing up at stations or passing places.

86. A passenger train must not leave a station, excepting to meet, or to be passed at the next station, by a train having the right of track, unless it has full schedule time to make the meeting or passing point.

87. A freight train must not leave a station, expecting to meet, or to be passed at the next station, by a train having the right of track, unless it has the full time allowed between stations, (to be shown on the margin of the time table) to make the meeting or

passing point, and clear the main track by the time required by rule to clear the opposing or following train.

88. A train not having the right of track, must be entirely clear of the main track by the time it is required by rule to clear an opposing train, or a train running in the same direction; failing to do so, it must be immediately protected, as per rule No. 95.

89. All trains must stop at schedule meeting places on single track, unless the switches are plainly seen to be right, and the track clear. The point at which a train should stop, is the switch used by an opposing train to go on the siding.

89 When an expected train is not found at the schedule meeting place, the train having right of track must approach all sidings prepared to stop, until the expected train is met and passed.

90. All trains must approach the end of double track, junction, railroad crossings at grade, and draw-bridges, prepared to stop, and must not proceed until the switches or signals are seen to be right, or the track is plainly seen to be clear.

91. Conductors and enginemen of trains not having the right of track must know that all trains of the same or superior class due, have arrived, before starting from terminal stations, leaving junctions, or passing from double to single track.

92. When a passenger train is delayed at any of its regular stops more than three minutes, the flagman must go back with danger signals and protect the train, as per rule No. 95; but if it stops at any unusual point, the flagman must immediately go back far enough to be seen by a following train at a distance of at least half a mile from the rear of his train, and if the stop is over one minute, he must be governed by rule No. 95.

When it is necessary to protect the front of the train, the same precautions must be observed by the fireman. The conductor as well as the engineman must see that the fireman performs this duty, and if he is unable to leave the engine, the front brakeman must be sent in his place.

93. When a freight train stops at its regular stopping places, where the rear of the train can be plainly seen by a following train, at a distance of at least half a mile, the flagman must go back with danger signals not less than 100 yards, and as much farther as may be necessary to insure stopping the following train; but if the rear of his train cannot be plainly seen at a distance of at least half a mile, or if it stops at any point that is not its regular stopping place, the flagman must go back not less than 900 yards, and if his train should be detained, until within ten minutes of the time of a passenger train following, he must be governed by rule No. 95.

When it is necessary to protect the front of the train, the same precaution must be observed by the fireman. The conductor as well as the engineman must see that the fireman performs this duty, and if he is unable to leave the engine, the front brakeman must be sent in his place.

94. When it is necessary for the flagman to go back to protect the rear of his train, the next brakeman must immediately take the flagman's position on the train, and remain there until relieved by

the flagman; and on passenger trains, the baggage master must take the place of the front brakeman whenever necessary. The conductor must see that this rule is strictly observed.

95. When a train is stopped by an accident or obstruction, the flagman must immediately go back with danger signals to stop any following train. At a point 600 yards from the rear of his train he must place one explosive cap on the rail; he must then continue to go back at least 1,200 yards from the rear of his train, and place two explosive caps on the rail 10 yards apart (one rail-length), when he may return to a point 900 yards from the rear of his train, and he must remain there until recalled by the whistle of his engine; but if a passenger train is due within ten minutes, he must remain until it arrives. When recalled, he will remove the explosive cap nearest to the train, but the two explosive caps must be left on the rail as a caution signal to any following train.

90 If the accident or obstruction occur upon single track, or if any other track is obstructed, the fireman must go forward and use the same precautions to protect the front of the train. The conductor as well as the engineman must see that the fireman performs this duty, and if he is unable to leave the engine, the front brakeman must be sent in his place.

96. Freight trains having to do work on any other track, may cross over if no passenger train is due, provided no approaching freight train is in sight; and also provided that a signalman has been sent with danger signals, as per rule No. 95, not less than 1,200 yards in the direction of the expected train.

97. When a freight train turns out on double track to allow a passenger train running in the same direction to pass, and while waiting, a passenger train from the opposite direction arrives, the freight train may cross back, and allow it to pass, provided the other passenger train is not in sight; and also provided that a flagman has been sent with danger signals, as per rule No. 95, not less than 1,200 yards in the direction of the expected train.

98. When it is necessary for a freight train to turn out on double track to allow a passenger train running in the same direction to pass, and a passenger train running in the opposite direction is due, a flagman must be sent back with danger signals, as per rule No. 95, not less than 1,200 yards in the direction of the following train, and the freight train must not cross over until one of the passenger trains arrives. Should the following passenger train arrive first, a signalman must be sent forward on the opposite track with danger signals, as per rule No. 95, not less than 1,200 yards in the direction of the overdue passenger train before crossing over. Great caution must be used, and good judgment is required to prevent detention to either passenger train. The preference should always be given to the passenger train of superior class.

99. If an accident or obstruction, make it necessary to move a train in the wrong direction on double track, or to cross over to the opposite track to pass around the obstruction, passenger trains may do so, but the utmost caution must be used. The conductor, before the train is backed, must send the flagman with danger signals, not

less than one mile in the direction in which the train is to be backed, and he must keep this distance from the rear of the train; as an additional precaution, a signalman must also be kept 900 yards from the rear of the train until the crossing is reached. Before the train crosses to the opposite track, the fireman must be sent forward with danger signals, and he must keep not less than one mile in advance, and the baggage master must also be kept 900 yards in advance of the train until it crosses back to its own track.

The train must only be backed to the nearest crossing in the rear, or run on the opposite track to the nearest crossing ahead, and while moving, the engineman must frequently sound the whistle, and not exceed a speed of four miles per hour, to enable the signalman to keep the required distance from the train.

This rule must only be observed when the accident or obstruction cannot be promptly reported by telegraph to the superintendent.

100. If a train should part while in motion, trainmen are required to use great care to prevent the detached parts from coming into collision. Enginemen must give the signal as per rule No. 39, and keep the front part of the train in motion until the detached portion is stopped.

91 The front portion will have the right to go back regardless of all trains, to recover the detached portion, first sending a signalman with danger signals 900 yards in advance, and running with great caution, at a speed not exceeding four miles per hour. On single track, all the precautions required by the rules must also be taken to protect the train against opposing trains. The detached portion must not be moved or passed around until the front portion comes back. This rule applies to trains of every class.

101. When a train is run backward (except when shifting and making up trains in yards), a signalman must be stationed in a conspicuous position on the rear car, so as to perceive the first sign of danger and immediately signal the engineman.

102. A train starting from a station, or leaving a junction, when a train of the same class running in the same direction is overdue, will proceed on its own time and rights, and the overdue train will run as per rules Nos. 84 or 85.

103. A train becoming delayed and falling back on the time of another train of the same class, does not lose its rights, and will not take the time or assume the rights of another train.

104. A train overtaking another train of the same or superior class, disabled so that it cannot move, will run around it, assuming the rights and taking the orders of the disabled train, and will report to the superintendent from the next telegraph office. The disabled train will assume the rights of the last train passing it.

105. Orders for the movements of trains must be given in writing, addressed to the conductor and engineman, and signed by the superintendent.

An order sent by telegraph must be immediately repeated back by the operator receiving it, and if correctly repeated, the response "O K" will he given. The conductor and engineman will then

sign the order, and the operator will send their signatures to the superintendent. When he has replied "Correct," the operator will write the word "Correct" on each copy of the order, with the time "Correct" was received, and deliver one copy to the conductor and one to the engineman, which they will read, while the operator reads the order to them aloud.

106. All messages respecting the movements of trains, or the condition of track or bridges, must be sent in writing.

107. Passenger trains must not display signals for a following train without an order from the superintendent.

Freight trains will display signals for a following train when ordered to do so by train masters or yard masters.

108. Extra trains must not be run on single track without an order from the superintendent.

109. When signals displayed for a following train on single track are taken down at any point before the following train arrives, the engineman must inform the superintendent promptly by telegraph, and also the operator or switchman, who must notify all opposing trains of the same or inferior class, leaving that point before the train arrives for which signals were displayed.

If signals are taken down at a point where there is no operator or switchman, the engineman must notify all opposing trains of the same or inferior class, until he reaches the next telegraph office, when he must inform the superintendent, and the operator must notify all opposing trains of the same or inferior class, until directed otherwise by the superintendent.

92 If the train for which signals were displayed leaves the main line at a point where there is no operator or switchman, a signalman must be left to notify opposing trains that it has arrived.

110. Work trains will be run as extras under special order, and will be assigned working limits; on single track, when passing a telegraph office within those limits, they must report the direction they are going. When standing they must be protected as per rule No. 95.

111. Trains running on long sidings must be governed by rules Nos. 124 to 127.

112. A train approaching a station where a passenger train is receiving or discharging passengers, must be stopped before reaching the passenger train.

113. Enginemen will observe trains running on the opposite track, and if following too closely, endeavor to call attention to the fact.

114. When a car or train standing on a siding is protected by a blue signal, other cars must not be placed in front of it so that the blue signal will be obscured, without first notifying the car-inspector, that he may protect himself.

115. No person will be permitted to ride on an engine without an order from the superintendent, or superintendent of motive power, except the engineman, fireman, road foreman of engines,

train masters, assistant engineers, and supervisors on their respective divisions; and conductors in the discharge of their duties.

116. Conductors and flagmen will be held equally responsible for the proper adjustment of the switches used by them, except where switchmen are stationed.

When there is more than one train to use a switch, it must not be left open unless one of the trainmen of a following train is at the switch, and takes charge of it.

117. Accidents, detention of trains, failure in the supply of water or coal, or defects, in the track or bridges, must be promptly reported by telegraph to the superintendent.

118. Passengers will not be allowed to ride on freight or work trains, without a special permit.

119. Conductors, enginemen, and flagmen must compare time daily with the standard clock.

120. A regular train must not leave a station before the time given for it on the time-table, nor without a signal from its conductor.

121. Conductors and enginemen will be held equally responsible for the violation of any of the rules governing the safety of their trains, and they must take every precaution for the protection of their trains, even if not provided for by the rules.

122. In all cases of doubt or uncertainty, take the safe course, and run no risks.

93 And thereupon JOHN S. BARBOUR, a witness of lawful age called by and on behalf of the plaintiffs, having been first duly sworn, is examined and answered as follows:

By Mr. COLE:

Q. Mr. Barbour, you were, I believe, at one time connected with the Virginia Midland railroad in some capacity?

A. I was.

Q. You were its president, I believe?

A. I was the president of the company for some years.

Q. During what time?

A. I was president of the company before 1865, for some years, and there was some little unpleasantness down in our country about that time, and I was superseded temporarily. I came in again in 1866, and I went out in 1884.

Q. You remained president until the latter part of the year 1884?

A. Yes, sir.

Q. In the last years of your administration of that office did you come in contact, to any extent, with the officer and agents of the Pennsylvania Company?

A. Yes, sir; I was the chief executive officer of the Virginia Midland Company, and was also its receiver from 1876 to the beginning of 1880—January 1st, 1880, I think. Then we reorganized and I was elected president.

Q. Did your company have dealings with the Pennsylvania Railroad Company?

A. Yes; it had traffic arrangements with them for freight and passengers between Alexandria and Washington over their line.

Q. Do you know Mr. J. R. Wood of that company?

94 A. No, sir.

Q. Of the Pennsylvania Company?

A. Do you mean the general passenger agent?

Q. Yes, sir.

A. I have met him, but my dealings were with the chief officers of the company—with Mr. Scott and Mr. Roberts, and with Mr. Cassatt, and those men.

Q. Do you know Mr. J. R. Wood?

A. Well, I only knew who he was. I do not know that I know him specially.

Q. What position did he occupy in 1884, when your relations with the Midland Company were dissolved? What relation did he sustain to the Pennsylvania Railroad Company?

A. I think you will find out that better from somebody else, for I really don't know him. My impression is that Wood was chief passenger agent of that road, succeeding some very well-known man who died.

Mr. TOTTEN: We do not want the Senator's impression.

A. I do not know that I can swear to anything specific regarding that fact.

By Mr. COLE:

Q. You can state whether there were any transactions or business between your company and the Pennsylvania Company in which Mr. Wood was recognized as the general passenger agent of that company?

A. I cannot say. The theory of these railroads, according to my experience, was that the officers dealt with men of the same class. I dealt with the president. Our superintendents, general passenger agents and freight agents would deal with the men of their class. The policy, contracts and orders all proceeded from the chief executive officer, however.

Q. Do you know Chas. C. Pugh, of the Pennsylvania Company?

95 A. Yes, sir.

Q. Do you know him personally?

A. Yes, sir.

Q. Can you tell us what position he occupied in February, 1884, when your relations with the Virginia Midland Company ended, during the last of your dealings with the company?

A. I had no dealings with Mr. Pugh whatever. The dealings that our office had in the latter part of my administration were with Mr. Wilkins, who was the superintendent and manager of the line of the Baltimore & Potomac railroad and the Alexandria & Fredericksburg railroad, George C. Wilkins. He was the man we would come in contact with. He was the man that our superintendent came in contact with; I do not think that I came in contact with him.

By Mr. WELLS:

Q. Is this the gentleman you refer to?

A. Yes, sir; he is the gentleman; and we have the pleasure of knowing each other. I do not think I ever had any business with Mr. Pugh.

By Mr. COLE:

Q. You had no personal business with him whatever?

A. I knew him very well. If I remember correctly, at the Centennial in 1876 he was the managing man at Philadelphia.

Q. Can you state whether Mr. Pugh had any connection with the Pennsylvania Railroad Company during the year 1884, and if so, what was it?

A. I could not tell you definitely. I am not sufficiently posted about that. I was not brought in contact with him. I was very little brought in contact with Mr. Wilkins, because he dealt with Mr. Randolph in the latter part of our career.

Mr. TOTTEN: If these gentlemen want to know about this we have got the man here.

96 Q. Mr. Barbour, I would like to have you state, in your own way, as definitely as you can, what arrangements existed between your company, the Virginia Midland Company, and the Baltimore & Potomac, the Pennsylvania Railway, the Alexandria & Washington, and Alexandria & Fredericksburg Company, about the running of trains between Alexandria and Washington at the time you severed your connection with the Virginia Midland road in the latter part of the year 1884. State what the arrangement was, with what men the arrangement was made, and how, in practice, it was carried out?

A. Well, sir, as near as I can recall now there was no Alexandria & Washington road in existence. The old Alexandria & Washington railroad had been bought out or had been superseded in some way or other. It was supposed to have been purchased for the Pennsylvania Company interest. I think one time it was run by Schoomaker and Stevens, when we had some dealings with it in the early part of 1870. I think perhaps it was the latter part of '60's. The Pennsylvania people then came in with their line to Quantico, having a through line, and they seemed to have charge of the whole business, so far as I knew. So far as I had any dealings with them, I remember of going to Philadelphia and meeting Mr. Scott and Mr. Cassatt at one time and Mr. Roberts. Afterwards, I think, I met Mr. Roberts exclusively. The whole thing was under discussion about our rights to come to Washington over their line. At one time we could not come to Washington. I told Mr. Scott that if he did not let us come to Washington over his road we would have to build a road on the other side of the river. He would not agree to it and then, with the assistance of John W. Garrett, of the Baltimore & Ohio road, we built that line which comes down to the place called Sheppard's. As soon as they saw

that we were getting another line they agreed to let us run our trains and come up to Washington, which was a better line,
97 and we used the other line for freight purposes, and made an arrangement to come to Washington. I do not believe there was any written contract executed. There were certain terms proposed and certain conditions involved which we accepted. It was about what these gentlemen would agree to give us. They claimed a specific sum *per capita* for passengers, and a certain price for freight over certain routes. We acted under their orders, and our trains were only to be moved when they had a pilot on board to assert their sovereignty of their company, and we were supposed to be, when we were on their line, under their control and direction. That is about the long and short of it, as far as I can recall it now.

Q. You made this arrangement as the president of the Virginia Midland road and on its behalf?

A. As president and receiver both, I think, sir.

Q. And the arrangement was made with the officers of the Pennsylvania Railroad Company?

A. Originally, yes, sir.

Q. Was it ever modified?

A. No, sir. At one time we had pretty well agreed upon the terms of a written contract. It was a sort of -*h*ipartite concern, I think, in which the Baltimore & Ohio were to come in. The thing was talked over and the agreement was talked over in Philadelphia with Mr. Roberts and his associates. They promised to reduce it to writing and send us the paper, but when they sent it to us it contained some provisions that had not been agreed to in the discussion and then Mr. Garrett had to be consulted and he made an objection and the contract was never adopted. So we went on under the old arrangement, with some modifications by the superintendents at the time.

Q. Who was the superintendent or who were the superintendents who made modifications subsequently, from time to time?

A. I don't know that they made any modifications. They made modifications so far as the schedules were concerned, but not
98 in the principles upon which the contract was made. They made modifications simply upon running schedules; that is with reference to running schedules.

Q. Who was the man who had charge or control of that?

A. Mr. Foraker was probably the first man who came into the arrangement. Mr. Vandergriff was our old superintendent. He retired pretty early and I think Randolph had more to do with it than anybody else. He is now the general manager of the Richmond and Danville system.

Q. I want to know more particularly who the superintendents were of the other roads. I mean the Pennsylvania road, the Baltimore & Potomac, the Alexandria & Fredericksburg road. Who were the superintendents and active business men or agents on behalf of that company or those companies?

A. In reference to the schedules?

Q. In reference to the schedules and the practical operations of the road.

A. I do not recall now that I ever met anybody in our office on that line except Mr. Wilkins. Wr. Wilkins' headquarters were in Baltimore. I know that because I have been there and seen him at home. I think that everything that was done at that time was reported to me by our people. There was not anything done of importance on the road that I did not look into myself. At the same time, these gentlemen were the parties treating. But before anything was ratified or confirmed, it was reported to me, especially during my time as receiver, when I was responsible, or my bondsmen were responsible, for the whole administration of the road.

Q. You spoke a moment ago about an arrangement that there should be a pilot put on your train to take charge of it. Who was that pilot to represent?

A. He was to represent the sovereignty of the Alexandria & Fredericksburg and the Baltimore & Potomac, as I understood.

99 Q. You also mentioned a moment ago that there were some schedules or division of freight and passengers' rates, &c., amongst the companies. I wish you would state what that was as near as your recollection will permit.

A. I could not state what it was. The details about railroad matters have faded out of my mind a good deal in the last seven or eight years.

Q. Without entering into matters of detail, can you state the proportionate parts.

A. That contract was never adopted. It was never executed.

Q. I understand that the written contract which you attempted to make was never signed.

A. It was never signed, and never was adopted as such.

Q. But I understand that as a matter of fact in the real operations of the road there was some sort of a division of compensation amongst the companies. Now, while you cannot give us the exact *pro rata* that each received, I wish you would state which companies received anything.

A. You mean the companies from Washington to Alexandria?

Q. Yes, sir.

A. Well, you mean to whom money was paid. So far as the contract was made, it was an entirety with the Pennsylvania railroad people from Alexandria to Washington. There was no division when the matter was discussed with Mr. Roberts and the principal officers of the Pennsylvania road. There was no discussion as to who owned the road between Alexandria and the south end of the Long bridge, or who owned the line from the south end of the Long bridge to the 6th-street depot We discussed it as an entirety, as property under the control of the Pennsylvania Railroad Company. They were running the Baltimore & Potomac and they were running a through line from New York to Quantico in the latter part of the period.

Q. The Pennsylvania Railroad Co. were?

100 A. Yes, sir. The Pennsylvania authorities. I would not say that the Pennsylvania Company, in its legal sense. There might have been some parties interposed, but I dealt, as the chief executive officer of the Midland, with these gentlemen. They divided the road from Alexandria to Washington, as I understand it. These gentlemen had some division.

Q. You don't know what that was; but you paid directly to the Pennsylvania Company.

Mr. WELLS: He did not say that.

By Mr. COLE:

Q. I will ask you this question:

The WITNESS: What I said was that the contract was negotiated as an entirety. When it comes to the accounts of officers and the dividing of payments, that is something I won't swear to.

Q. Your company paid some compensation to somebody for the privilege of having your trains run over from Alexandria into Washington?

A. Undoubtedly.

Q. To whom did you pay that compensation?

A. That is a question that I told you I could not swear to. The books of the respective companies would show. My impression is that the same officers—I won't give an impression. I am not posted enough to answer definitley, and don't want to say anything that I don't know.

Q. Then the arrangement that you did make for the privilege of running your train from Alexandria into Washington over the Washington and Alexandria track and the Baltimore and Potomac track was made with the authorities of the Pennsylvania Railroad Company?

A. Originally, yes, sir.

Q. That is a fact?

A. Yes, sir.

101 Q. And that arrangement was made with you as president of the Virginia Midland Company?

A. Yes, sir; I was president.

Q. And receiver?

A. Yes, sir; and it was made and continued perhaps as receiver.

Q. As to the price or compensation and how much was paid by your company and to whom it went, you are not informed?

A. I am not now. I do not remember distinctly enough to testify about how the division was made, if any was made, and I presume there was.

Q. Was the Pennsylvania Company to have any compensation, or did they give you the privilege of running your trains up here without paying anything?

A. We got the original privilege from Mr. Scott and Mr. Roberts, or probably from both, because it was a continuous thing. But when you come to speak of the Pennsylvania railroad you

know it is a pretty large concern and sometimes it operates other people's roads.

Q. What I want to know is, if you remember, whether your company was to pay anybody anything for the privilege of running your Midland train from Alexandria to Washington and back, or whether they gave you that privilege for nothing?

A. No, sir; I stated in the beginning that we were to pay a *per capita*, I think 35 cents for each passenger, and so much on freight for each car load or by the ton.

Q. And that arrangement was made with Mr. Scott the president of the Pennsylvania Railroad Company?

A. With Mr. Scott and Mr. Roberts. I think originally with Scott and later with Roberts, with some modifications.

The court thereupon took a recess of 30 minutes.

102 After recess.

Cross-examination of the witness, JOHN S. BARBOUR, by Mr. WELLS:

X Q. Do you remember about the date when the first negotiation took place as to that arrangement by which business was to be done over the Alexandria & Washington road? Do you remember about the date when it took place?

A. I do not know that *that* I could state distinctly. Won't the papers in the case show? I would not like to refer to such an old transaction indefinitely. I might misstate it. It was prior to 1876, certainly, because when I came in as receiver I distinctly remember, in July of 1886, of writing to the Pennsylvania authorities in Philadelphia to know if the existing arrangements should be continued, and was answered affirmatively.

X Q. There was some prior arrangement under which the various roads did business over that little link between Alexandria and the south end of the Long bridge?

A. I don't know anything about other rights than those of the Midland road, because I did not recognize except what was then called the Loudon & Hampshire road and the Washington & Ohio; they probably had an arrangement that I knew nothing about. I speak of the Midland. I was president of the Midland a long time, and I think I did know all about it at one time. I may have forgotten the dates and something about the details, but the general principles of what happened there I remember during my administration of the Midland road. I am pretty much at home about that.

X Q. But you are not distinct in your recollection of the details of the contract at that time?

A. Not in regard to the details of the contract and the
103 running arrangements, and things of that sort strictly; but as regards the principles upon which it was based and the rule which was to involve liabilities to the Midland company I was pretty clear.

X Q. Do you remember whether Mr. Cassett and Mr. King conferred with you on that subject?

A. I remember that at one of our interviews in Philadelphia Mr. King of the Baltimore & Ohio road was present—Mr. John King, Jr. He was called with our superintendent and himself represented the interests of the Midland Company. Mr. Scott and Mr. Cassatt and, I think, Mr. Jewett, were present at the same visit. Mr. Jewett was just from Ohio. He represented the Ohio Central and was present there.

X Q. He was president originally of the Erie?

A. Yes, sir; but not then. He had not gone there then. That was away back yonder.

X Q. That was a convention of the different parties who were running over that little road from Alexandria to Washington, the Alexandria & Washington road, the Alexandria & Fredericksburg road and your road?

A. I think that so far as Mr. Jewett was concerned he was a mere attache of the Baltimore & Ohio. The Baltimore & Ohio had leased the Ohio Central and Mr. Jewett was in charge of that interest. They were trying to get all the business they could from the West, from that Ohio line. I remember that he was there. I was present during the conversation.

X Q. You say that your recollection of the details of that contract is not distinct?

A. No; I don't say of that contract. I remember very well the general principles of that agreement and the general ground upon which the contract was made. When I speak of details I mean schedules and all that sort of thing which was entered into and executed by our superintendent and superintendents of these roads. These presidents were supposed to be the principal officers of the company, although in point of fact they are not always so,
104 but they were supposed to be the principal executive officers and they made the policies of railroad companies. They agreed upon the general principles upon which certain things were to be done involving liabilities and involving very important action upon their part.

X Q. I understood you to say that no contract was signed.

A. No contract was signed. We agreed in a general way upon what should be the contract. I remember that. I do not refer to that matter when King was present. I do not think he was present when these arrangements was agreed upon. I do not think King was present. I think that arrangement was probably made with Mr. Roberts and Mr. Randolph and myself, or perhaps Mr. Foraker. Randolph was there before Foraker. He was there as superintendent of the Midland road.

X Q. That agreement, necessarily, if you had settled upon its terms, would have been turned over to proper financial officers of the respective roads?

A. If it had been adopted the financial officer would have been notified that so far as his division was concerned he must carry out

the details of the agreement; but he could not act on it unless it had been adopted.

X Q. When you came to settle from 1872 to 1884, under what agreement did your financial officer settle?

A. I think they settled under this sort of an understanding, that these Pennsylvania people were to charge so much for our use of their road and tracks and they were to have control of the running of all the trains.

X Q. Was that upon the trackage basis or upon the *pro rata* basis?

A. It was on the *pro rata* basis. We paid 35 cents a passenger and so much for freight. I think it was $4 per car load for certain low grade freight and a higher price for a higher grade freight.

X Q. You are running your own rolling stock?

105 A. Under the orders of the other side.

X Q. You used your own rolling stock?

A. Yes, sir; and sometimes theirs, I guess.

X Q. And your own crews?

A. Yes, sir.

X Q. And there was a conductor on in addition to your officers?

A. There was a Pennsylvania man who represented that line on the road.

X Q. You owned, then, the engine and cars that did the business for your road between Alexandria and Washington?

A. Yes, sir; that was the case when I was there.

X Q. Who paid the crews of your engine and trains?

A. We paid the crews.

X Q. You paid them?

A. Yes, sir.

X Q. Now will you let me read from this book a memorandum of agreement?

"EXHIBIT RECEIVER A. AND W. R. R. No 1."

This agreement made this — day of ——, anno Domini, 1875, between the Washington City, Virginia Midland and Great Southern Railroad Company of the first part, Josiah Bacon and Strickland Kneass, trustees of the Alexandria & Fredericksburg Railroad Company, of the second part, and the Baltimore & Potomac Railroad Company of the third part.

The WITNESS: I would like to interrupt you so far as Strickland and Kneass are concerned. I don't think I ever saw either of them.

Mr. WELLS: They were not present.

The WITNESS: And, therefore, I could not recall a contract made with men I had never seen.

106 "Whereas the party of the first part is desirous of securing the privilege of passing——

Mr. KENT: I would like to have it stated right here now that this contract never was signed.

Mr. WELLS: It never was signed.

Mr. KENT: Let it be understood here now that this contract never was a contract which was signed by the Virginia Midland authorities.

Mr. WELLS: That is true. It never was signed, but after it was agreed upon it was delivered to the accounting officers, and for twelve years they settled on it.

The WITNESS: They did not settle under any such contract while I was there. I am very clear on that point, because the accounting officer was under me, and I was the receiver in that year. Nobody interfered with me all.

Mr. WELLS: I will read this contract:

EXHIBIT "RECEIVER A. & W. R. R." No. 1.

This agreement made this — day of —— anno Domini, one thousand eight hundred and seventy-five (1875) between the Washington City, Virginia Midland and Great Southern Railroad Company of the first part, Josiah Bacon and Strickland Kneass, trustees of the Alexandria & Fredericksburg Railroad Company of the second part, and the Baltimore & Potomac Railroad Company of the third part.

Whereas, the party of the first part is desirous of securing the privilege of passing all its passengers and freights trains over the road owned and controlled by the party of the second part between the junction near Duke street in the city of Alexandria and the south
107 end of Long bridge across the Potomac river at Washington, and over that portion of the road of the party of the third part which extends from the south end of the Long bridge aforesaid to the junction of Seventh street and Maryland avenue in said city of Washington, and in consideration thereof proposes to forward or cause to be forwarded during the continuance of this contract, all of its traffic of every kind, excepting mails, coming from or destined to any point north or south of Alexandria, and passing or intending to pass to or over the railroad of the party of the first part.

And whereas, the parties of the second and third part respectively are willing in consideration of the promise above cited and the conditions hereinafter set forth, to open said line to the traffic of the party of the first part.

This agreement witnesseth: First. That the parties of the second and third part respectively hereby agree to authorize and empower the party of the first part to run its passengers and freight trains over the said line of road from the city of Alexandria to the city of Washington.

Second. The employés of the party of the first part, shall at all times while upon any portion of the line hereinbefore described, conform to the discipline and orders of the company owning such portion.

Third. The proper officers of the parties to this agreement shall from time to time agree upon the necessary schedules for the run-

ning of the trains, all trains passing over said line shall be entitled to equal facilities in all respects, and no unnecessary hindrance shall be offered by the trains of any one of the said companies to the trains of the parties of the second and third part respectively, shall have precedence over trains of the like class upon the portions of said line owned by said parties of the second and third part.

Fourth. In case any liability shall arise by reason of the negligence of any officer or employé of either of the parties to this agreement, such company only whose officers or employé shall have been guilty of such negligence shall be responsible therefor, but in
108 case of the concurrent negligence of the employés of any two or more parties of this agreement, there shall be no liability from any one of said parties to any other.

Fifth. The party of the first part is to provide its own depot and terminal facilities in said city of Washington at some point between the Potomac river and Seventh street, it being distinctly understood that the privilege accorded by this agreement is exclusively for the use of the main tracks of said line of railway, provided, however, that for the period of four months from this date, the party of the first part shall be at liberty to use the depot and other terminal facilities of the party of the third part in said city of Washington, and for such use shall pay to said party of the third part the sum of five (5) cents in addition to the sums hereinafter set forth for each passenger and a like sum for each ton of freight carried over said lines.

Sixth. The party of the first part hereby agrees, as a condition precedent to the enjoyment of the privileges hereby accorded to it by the parties of the second and third part respectively, that it will during the continuance of this agreement forward or cause to be forwarded over the said line of railway from the city of Alexandria to the city of Washington all its traffic of every kind, excepting mails coming from or destined to any point north or south of Alexandria, and passing or intending to pass to or over the railroad of the party of the first part.

Seventh. The party of the first part hereby agrees to pay as toll for the use of the main tracks of said line of railway to the parties of the second and third part jointly upon the twelfth day of each month the sum of thirty-five (35) cents for each passenger, and a like sum for each ton of freight transported by it over said line together with such a sum for rental as shall be expended by the party of the second part in the maintenance of its tracks on Henry Street, between Duke street and St. Asaph junction, in said city of
109 Alexandria, provided, that should the party of the first part hereafter run a train for the exclusive accommodation of local passenger traffic between said city of Washington and any point not more than (30) thirty miles south of said city of Alexandria, the parties of the second and third part, respectively, agree to accept the sum of thirty-five (35) cents jointly for each passenger carried on said train either from said city of Alexandria to Washington and return, or *vice versa*, and provided also, the said party of the first part shall pay to the said parties of the second and third part jointly for express matter when carried in the baggage car of any

regular train the sum of forty-two (42) cents for each ton, and when carried in separate express cars, the sum of four dollars and twenty cents ($4.20) from each car transported by it over said line, and provided also, that the party of the first part shall pay to the parties of the second and third part jointly the sum of one (1) cent for each gallon of milk transported by it over said line, and for new locomotives and cars, one-half part of its own charges for the transportation of the same over said line, which charges shall not be less than those which are usual upon railroads south of said city of Washington, but no charge shall be made for any empty cars returning which have already passed over said line loaded.

Eighth. It is expressly understood that mail matter is excluded from the terms of this agreement.

Ninth. It is also expressly understood that the passenger and freight traffic herein contemplated includes all passengers and freight between the cities of Alexandria and Washington, whether starting at Alexandria or south of it, or at Washington or points north of it, and destined to the road of the party of the first part, and that the express traffic herein contemplated includes all express matter transported upon the trains of the party of the first part.

Tenth. The party of the first part agrees to keep full and accurate accounts of all its traffic of every kind over said line, and to afford access to said accounts to the proper officers of the parties of the second and third part respectively, at all reasonable times.

Eleventh. It is understood that where the term "ton" is used in this agreement, it is to be understood as meaning a ton of two thousand (2,000) pounds.

Twelfth. The party of the first part agrees to open its line for the interchange of traffic of every kind with the parties of the second and third part respectively, at as low rate as may be exacted of any other company; that it will avoid any discrimination in favor of any other line, and that it will furnish the parties of the second and third part respectively, and all points reached by them, and any of them, a full line of tickets with baggage checks to be sold on application at the same rates as by any other line.

Thirteenth. It is also agreed that the party of the first part shall during the continuance of this agreement enjoy the option of running either its passenger or freight trains from the junction of Seventh street and Maryland avenue, in the city of Washington aforesaid, northward to Benning's station upon the line of the road of the party of the third part and shall pay therefor the sum of fifteen (15) cents for each passenger and a like sum for each ton of freight transported by it from said junction to said station, but each car containing lading shall be rated at not less than ten tons, provided that, as a condition precedent to the exercise of said option, to run either its passenger or freight trains, the said party of the first part shall forward or cause to be forwarded all its passenger or freight traffic according to the option exercised of every kind to or from points north of said Benning's station, over the line of said parties of the second and third part between said station and the

city of Alexandria, and provided further, that should the party of the first part elect to run both its passenger and freight train and forward or cause to be forwarded all its passenger and
111 freight traffic of every kind, to or from points north of said Benning's station, or a connection to be made immediately north of the bridge over the Eastern branch of the Potomac, over the line of the said parties of the second and third part, between said junction and Alexandria; then and in that case, the rates to be paid the parties of the second and third part shall be forty (40) cents for each passenger and a like sum for each ton of freight transported, but each car containing lading to be rated at not less than ten ton-, said sum to be in addition to the rental provided for the Henry-street trade in Alexandria.

Fourteenth. This agreement shall continue in force until the first day of September, anno Domini, one thousand eight hundred and seventy-six (1876), and from year to year thereafter, unless either party shall give to the other parties a written notice sixty (60) days prior to the first day of September of 1876, or of any year thereafter, in which case, this agreement shall be annulled and made void at the time fixed in said notice for the annulling of the same.

By Mr. WELLS:

X Q. Is not that, in substance, the contract under which the business was done by your road from the date mentioned here to the present time over the Alexandria & Washington railroad?

A. What is the date mentioned there?

X Q. 1875.

A. 1876 you read it.

X Q. Then I made a mistake. It was to continue until 1876 and as long as you pleased thereafter, unless it was terminated.

A. Well, sir, you asked me if that was not the contract.

X Q. Is not that in substance the contract, agreement or arrangement under which the business was done from that time as long as you remained in control of the road?

112 A. I think not, sir. I think not. The original arrangement was not made with those parties. The original arrangement was not made with those parties at all. Of course it is a good while ago and I have to argue a little upon the facts that are in my mind. My impression is that that paper which you have just read was served upon us as a sort of a notice that these trustees had come in and taken charge of the old Alexandria & Fredericksburg road. In the beginning that road was built by the Pennsylvania Company proper.

X Q. Which road do you speak of?

A. I mean the Alexandria & Fredericksburg; and it went to Washington. I remember distinctly about Mr. Roberts coming to see me about crossing the Midland road four or five miles south.

— Q. That is south of Alexandria?

A. Yes, sir; that road was originally operated, I think you will find, upon better information than mine—that road was originally operated by these Pennsylvania people; but they got into financial

difficulties, and there was a good deal of suing and they generally took relief, as some of the rest of us had to do, under the cover of the court and have the property passed to trustees or the appointed trustees instead of a receiver. They served that paper, I guess, upon us because they wanted us to know who were the parties that we had to account with, and who we had to settle with. But so far as an agreement—there are stipulations in that agreement which I never would have agreed to on the part of our company. There are liabilities assumed that I would not have agreed to, I am satisfied. When our trains were turned over to another company to run on their own road to Washington, under their own orders, with their own pilot on board, I should not have dared, as the manager of the Midland Company, to have taken the responsibility of their orders and directions how to run the train. That is a liability that as receiver I never could have taken, and as president of the
113 company I would not have taken it. You say to that road: You have got the road and the management and the telegraph—you have got it all, and I will run my trains on your orders—I could not do that, excepting by their taking all the responsibility.

X Q. Perhaps I may refresh your recollection. Do you not remember when the Alexandria and Fredericksburg road were constructed it was to run between Quantico and Alexandria and not north of Alexandria?

A. I am not so clear about that. I think they must have had the long end of the line from Alexandria to Washington or they never would have built the line from Alexandria to Quantico, for they would not want to come to Alexandria to get the water, when they could get the same water at Quantico.

X Q. And that there was an act of the legislature subsequently authorizing them to continue their road from Alexandria to Washington. That they then proceeded by proceedings to condemn the west track of the Alexandria and Washington road?

A. I do not remember that act of the legislature; but under the general railroad law of Virginia they had the right to run 10 miles of that distance in any direction.

X Q. But not to cross any other parallel line?

A. I think not. I never heard, in our railroad law, of that. I never heard any objection to parallel lines. We wanted to get all the parallel lines we could in the interest of the people.

X Q. Don't you know that the Alexandria and Fredericksburg Railroad Co. executed a bond for a million dollars and defaulted in the payment of that, and the trustees named in that mortgage took possession of it under that mortgage?

A. I don't remember about that. I remember that the Pennsylvania railroad managers were always around. It does not matter what you call it. They are always around. They were the people we knew. We were not going around in the dark and running trains out on other people's roads.

114 X Q. Who, under the arrangements that did in fact exist, had the fixing of the time-table?

A. Why the Pennsyvania people, I guess, pretty much.

X Q. You guess?

A. Well, I think they did; I believe they did.

X Q. The Pennsylvania railroad as such?

A. I am only using your "guess" as a man from your country is accustomed to use it.

X Q. Did you ever see a paper to which the Pennsylvania railroad was mentioned as a party in relation to that business there? If so, tell us what paper it was.

A. I never saw any paper in which the Pennsylvania railroad, *eo nomine*, perhaps, was mentioned; but at the same time, when I was dealing with these gentlemen, who controlled the Pennsylvania railroad, it was well understood they would see that the agreement we entered into was carried out, and that they were responsible for it.

X Q. Who were the gentlemen who agreed on the part of the Pennsylvania railroad by that name?

A. I think it was Mr. Scott and Mr. Roberts, and Mr. Cassatt was also present at some of the interviews. They were the gentlemen that we had to go to. Mr. Wilkins had a great deal to do with it, but that was subsequently. He was the executive officer of the Baltimore & Potomac road. I understand that the Baltimore & Potomac road was leased by the Pennsylvania road. Is not that correct?

Mr. WELLS: No, sir.

By Mr. PAYNE:

X Q. I think you said something about the Pennsylvania people paying the interest on Baltimore & Potomac bonds?

A. I said I understood that the Pennsylvania people paid the interest on their bonds. I do not say that here as a witness.

115 Mr. WELLS: I hope you will not say anything except as a witness.

The WITNESS: I will take that back.

By Mr. WELLS:

X Q. Do I understand you to say that the Pennsylvania Railroad Co. had a lease on the Washington & Alexandria road at any time?

A. If you want to know what my understanding is I will tell you.

X Q. I want an answer to that question.

A. I could not say about a lease. Originally when I was president of what has been called the Old Orange, Alexandria & Manassas road we came to Washington from Alexandria for some time over the roads that were operated by Stevens.

X Q. Stevens and Phelps?

A. By Stevens and Phelps for a part of the time. That was finally, as I understood it, absorbed by the Pennsylvania Railroad Company.

X Q. Let me ask you in the first place, do you know of your own knowledge any of these things, as to absorbing?

A. I only know what Mr. Sam. Schoomaker, who was a large stockholder at the time, told me.

X Q. That is not evidence. Do you know anything on that subject of your own knowledge?

A. Well, you questioned me as to what I knew and I only told you what I had heard. How could I know it unless I was a party in the transaction?

X Q. Then you don't know it?

A. I only knew as one railroad man know things; we know that railroad people who have connections to make generally look ahead to see what they are doing; they want to know who is behind.

X Q. Do you know of your own knowledge how the title which French held to the Alexandria & Washington railroad ever passed into Schoomaker?

116 A. I could only tell you from what the men who owned the stock told me.

X Q. But of your own knowledge?

A. How could I know any better than that?

X Q. I don't know.

A. I only know what they said. The men who owned the stock told me that they had sold it out to those people.

X Q. Do you not know that it passed by a decree made in the court of appeals in Virginia?

A. Well, to some extent.

X Q. Entirely, and in no other way?

A. But I also knew because the people who received the money told me.

X Q. I object to anything that anybody else told you.

A. But where the people who owned the stock would tell me I should think that would be pertinent.

Mr. WELLS: That is hearsay.

* * * * * * *

The WITNESS: I could tell you this: I do know that when Schoomaker and these parties sold the old line that we had an arrangement with them, and certain other arrangements were made by which other people got control of that road.

By Mr. WELLS:

X Q. Do you know that of your own knowledge?

A. Yes, sir.

X Q. Who bought control of it?

A. These people who operated afterwards, these Pennsylvania railroad people and the Baltimore & Potomac, the Alexandria & Fredericksburg. Stevens and Phelps were the parties that went out. The Old Orange, Alexandria & Manassas road at that time had a contract to come to Washington over another bridge. The

remains of it are down here now. When these new people
117 came in—who they were I only knew from the men that were operating it. They were the same men who were operating it afterwards, and some of them perhaps are to-day. They suffered this old line to go down. The bridge became unsafe and the road was neglected, and that forced us to make arrangements to go over the river and to make new arrangements with the new parties who had come in and were operating a line there through the Potomac depot over the Alexandria & Washington road. It was the intention of the purchasers of that road to let that line to Quantico go down, and I could not run passengers across an uncertain bridge and over a road that was not kept in repair.

X Q. Was not the fact simply that the bridge rotted down and a new bridge was necessarily built?

A. It was built alongaside of it before it rotted down.

X Q. They used the old one until the new one was built?

A. I don't know about that. Both of them were used at the same time I remember once.

X Q. I understand you to say that you do not mean to express any opinion or to state whether the Pennsylvania Railroad Company as a railroad company, was in that or not?

A. I said awhile ago that *eo nomine*, by that name, they were not, but that substantially in my opinion they were.

X Q. I do not ask for your opinion. I do not want your inferences.

A. I had to deal with responsible parties. They were the people I dealt with.

X Q. If you will pardon me, you thought they were; but as a matter of fact they were not.

The WITNESS: You say they were not? I only knew from the people I had to deal with.

X Q. From whom and with whom did you, subsequently to the dates that are given in this contract, settle your different accounts?

A. We settled with the accounting officers of the Baltimore
118 & Potomac railroad, I suppose, or the Alexandria & Fredericksburg. I do not know. You say that I must not say anything I do not know certainly; but that is my impression.

X Q. Your impression is that you settled with the officers of the Baltimore & Potomac and the Alexandria & Fredericksburg?

A. I am sure so.

X Q. Do you mean with the officers of the Alexandria & Fredericksburg road or with the trustees who had possession of the road?

A. When the trustees had possessien, of course, we had their financial officer and we settled with them, I suppose. Of course after the notice was received that these men had possession of the road we had to recognize that fact and deal accordingly.

X Q. You had to deal with the trustees after they took possession and you had notice of it?

A. So far as money was concerned; yes, sir.

X Q. What contract was furnished to your financial officer as a rule under which these settlements were to be made?

A. I think it was a continuation of the old contract; so much for passengers and so much for freight. Probably that paper you read over awhile ago might embody what was the understanding on that point.

X Q. Do you know of any particulars in which the existing contracts that you refer to, differed from the one that I have read? If you do, please specify it.

A. I think that there was a stipulation in there, as I heard you read it; I don't know that we ever agreed to it; we never agreed to it; because if we had agreed to it we would have signed it. There were some things put in this contract that I never did accept, and I don't think I would have accepted. I made a contract of that sort while I was receiver and had to present it to the court and get the court to approve it.

X Q. Examine the paper and state wherein it differs.

119 A. I should say that that fourth clause was one that I never would have agreed to.

X Q. Read that clause.

A. "In case any liability should arise by reason of the negligence of any officer or employé of either of the parties to this agreement, such company only whose officers or employé shall have been guilty of such negligence, shall be responsible therefor, but in case of the concurrent negligence of the employés of any two or more parties, there shall be no liability from any one of said parties."

Now I never entered into that stipulation. When I was there and had control, and I put trains of the Virginia Midland or of the Old Orange, Alexandria & Manassas and turned the business over to the other company to go on their road, I considered they were responsible. They were *pro hac* the agents and officers of the parties that owned the road and directed the trains.

X Q. "In case any liability shall arise by reason of the negligence of any officer or employé of either of these parties, such company only whose officer or employé shall have been guilty of such negligence shall be responsible therefor." Was not that your agreement?

A. No, sir. When we got on their road I did not think we had anything to do with that. They were *pro hac* their own men.

X Q. Suppose one of your own engineers had caused the injury; who would be responsible?

A. He was their engineer for the time being. He had got out of our jurisdiction. We could not give him any orders.

X Q. You think there was a provision different from that in the contract?

A. I don't think there was any provision of the kind I think they just took the chances. They never asked me to agree to anything of that sort in the talk that we had. I do not think I ever would have agreed to anything of that kind, because I con-

120 sidered that the Pennsylvania railroad had control of their own tracks. They could order their schedules. They could

telegraph to the trains to stand or to move, and I had no power at all except "by your leave, sir."

X Q. Is there any other particular in which it differs?

A. I have never read it thoroughly. The paper never was accepted. I told you a little while ago that I thought that paper might have come in to us rather as a notice that these new trustees were to take possession of the road, and that they wanted to let us know they were there.

X Q. You will perceive that I am trying to find out what was the nature of the contract under which you actually operated.

A. I have tried to explain it several times as a verbal contract. It was just such a contract as we could get from the Pennsylvania people. They held the long end of the rope and had things pretty much as they pleased, and we had to take what they were pleased to give us.

X Q. Was there any written contract submitted to your accounting officer?

A. There was; that other contract was submitted.

X Q. This contract was submitted to him?

A. This was the result of the talk at Philadelphia with Mr. Roberts and Mr. Cassatt and these gentlemen. That is my impression.

X Q. This contract?

A. Well, something similar to that. I do not know as that is the same, but it is something like it. When that one did come I say I declined to sign it, because it contained stipulations I had not agreed to.

X Q. Did you substitute any other contract for it?

A. No, sir; I don't think we did.

X Q. If you did not, what contracts did you settle under?

A. These gentlemen who offered that contract gave us their terms.

X Q. And you submitted, as you had to do?

121 A. No; we had an existing arrangement, and we continued the existing arrangement to pay them so much a passenger and so much for freight, &c. It was not different from the rates charged in that contract, if I remember correctly; but I have been out of this railroad business five or six years, and I am not as well up as the professional men. I can only go back and remember some years ago when I was around. When a man gets up here to the capital in politics he forgets about railroads. I have got clear of railroads by this time. I served my time at that. I was thirty years in the railroad service.

X Q. You say you understood that Mr. Wilkins represented the Pennsylvania road. Am I right in that?

A. I said he represented the Pennsylvania railroad interests, but through the Baltimore & Potomac. I am not sure about that. I cannot say whether he covered in this Alexandria & Fredericksburg road or not. My impression is that at one time he was the operating officer of that company.

X Q. Can you state of your own knowledge that Mr. George C.

Wilkins ever represented the Pennsylvania railroad in the management of the business between Alexandria and Washington?

A. Do you mean technically?

X Q. As a fact.

A. I think I know as a fact that he did otherwise; I do not see what he was doing about our office with our superintendent making arrangements about schedules and things of that sort.

X Q. Did he not represent as receiver the Alexandria & Washington railroad, and was not this schedule conversation particularly and solely in respect to that road?

A. Now, General, you are talking as a lawyer about what was done in the court and how the thing appears on the record. I only know the substantial facts. When I saw these men coming round and making schedules and things I thought that they were
122 all officers of the company or agents of the people that we knew they were in with. I could not tell about trustees or mortgages or the technical arrangements in the court. I would get confounded with them.

X Q. It was necessary that there should be a time-table agreed upon by the three roads, the Alexandria & Washington, the Virginia Midland and the Alexandria & Fredericksburg?

A. I don't think that we ever knew the Alexandria & Washington road much. The managers of the Baltimore & Potomac were the managers of the Alexandria and Fredericksburg so far as I ever knew, after that road was built.

X Q. You do not know that Mr. Wilkins was the sole manager and receiver?

A. I knew, because Mr. Roberts, as I told you, the president of the Pennsylvania road, came to see me when they were building the Fredericksburg & Alexandria road and got the privilege to go over our ground at Alexandria. They went through our yards. They crossed our lines four miles out. They were very anxious to make this arrangement. He did not pay the Midland Company and has not paid them anything yet for going through our yard at Alexandria. Then they crossed our lines. I was very much blamed for allowing them to do that, but I wanted to accommodate the Pennsylvania road a little because they held the gate to the way from Alexandria to New York.

X Q. It was altogether to the Alexandria & Fredericksburg road, was it not?

A. Yes, sir.

X Q. And Mr. Roberts, who was president of that road, got their consent?

A. I did not say that he was the president technically of the road. There may have been somebody else. He came to see me as the man who had control of the situation.

X Q. Did he say that he had control of the situation?

123 A. Yes, sir; he said so. I dealt with him as a man who had control of the situation, from his own statement. Why would he come into my office at Alexandria, a man of Roberts' proportions, to talk about a thing if he did not have control of it?

X Q. He said that he was president of the road, and that he wanted to cross your line, and he came in to get your permission?

A. I did not know him as that. I knew him as president of the Pennsylvania railroad, and I knew he could go pretty much where he pleased.

X Q. Do you know in what capacity he appeared?

A. I do not know any more than I have told you.

X Q. You do not know in what capacity he appeared?

A. He made an impression upon me that he appeared as the president of the Pennsylvania railroad, and this was a sort of outlying branch.

Cross-examination.

By Mr. KENT:

X Q. You have had some considerable experience as a railroad man practically?

A. Yes, sir.

X Q. Will you state to the jury, from your experience as a railroad man, whether these people who run trains over any given railroad line ever run them under more than one head to control and manage them.

A. I should not think it would be safe to do so, sir; and I never heard of a case where it was done by but one party in control.

X Q. Did you, as president of the Virginia Midland Company, at any time, or as its receiver, have any authority to run trains from Alexandria to Washington, or from Washington to Alexandria?

A. Only as has been stated, subject to the understanding of these parties that represented the connecting line.

124 X Q. When your trains started out from Alexandria on their course to Washington, who took charge of them?

A. To the arrangement which existed at the time, the Pennsylvania railroad did. Our conductors stayed upon the train, as I understand, for a certain purpose.

Mr. TOTTEN: I wish you would tell us what you know only.

The WITNESS: I speak of it as knowing the road, for I was at the trains regularly looking around. I also know that that was the agreement—that they were to put a pilot or agent—they call him a pilot technically—they were to put on a pilot to have control of that train under their agreement. They were to put a man on that train who was to assert the supremacy of the Pennsylvania railroad interest, whatever it was.

By Mr. TOTTEN:

Q. You always say the Pennsylvania railroad.

A. Well, they were the only people I ever knew.

Q. What I want to know is whether you mean the Pennsylvania Railroad Company as a corporation.

By Mr. KENT:

X Q. I have understood that you do not know about the details of the execution of the contract; but who represented the supreme head of the Virginia Midland, when you were president and when you were receiver?

A. You know that a president is considered to be the chief executive officer of the company, and when the receiver comes in he is considered to be the head of the company.

X Q. Without going into the details, as such head of the Virginia Midland R. R. Co., with whom did you negotiate or secure
125 the privilege of the Midland Co., to run or have its trains pass over to Washington?

A. I negotiated with the office in Philadelphia, Mr. Roberts, and these gentlemen. I never made any negotiations with Mr. Wilkins that I can recall. Whatever arrangements were made with him were made by the superintendent.

X Q. Do you know Governor Bowie, of Maryland?

A. Yes, sir.

X Q. Did you know him in 1875?

A. I did. I knew him before the war.

X Q. He is the president of the Baltimore & Potomac Railroad Co.?

A. He has always been president, as I understood; but Bowie never operated it.

X Q. Did you ever have any relation with Governor Bowie in any way?

A. No, sir.

X Q. In making the arrangements for the transportation of trains over the road from Alexandria to Washington, did you ever in any way recognize the trustees Kneass and Strickland, or know anything about them?

A. There was no arrangement made with these new parties. As I understood, they came in about the panic of 1873. Railroads, like bankers and other people who had a good deal of paper on the street, had to take refuge, some of them, and go into (the) country, and get under the cover of trustees and receivers, and all that.

Mr. TOTTEN: Have you been there yourself?

The WITNESS: Yes, sir; but we pulled through with ours.

By Mr. KENT:

X Q. I want to ask whether or not, so far as you know, there was any paper or agreement signed regulating the transportation of your trains over the road from Washington to Alexandria.

126 A. I am sure there was never any contract signed. There was a verbal understanding. I mean prior to the 1st of January, 1885. I am more certain about things up to 1882, or 1883, because the road practically changed hands then, and although I was president, still I did not, perhaps, pay the same attention to it after that.

X Q. The proposed contract which was made the basis by Gov.

Wells for his question, in the 5th paragraph, states that the Virginia Midland railroad is to provide its own depot and other facilities in effect to leave Washington at some point between the Potomac river and 7th street. Was that ever carried out?

A. Never. That was a matter of discussion between the parties at the time. The object was to prevent them from gouging us for the facilities which we enjoyed at the 6th-street depot. If they made too high a terminal charge then we were to have the privilege of putting up our own depot. We wanted to get a freight depot.

X Q. I will ask you whether or not you had any contract during your administration of affairs of the Virginia Midland Railroad Company for the transportation of mails north of Alexandria?

A. I do not remember about that. I would have to look at the records. My impression is that at one time, in the earlier stages, we got mail pay, but the Pennsylvania people thought they were entitled to the mail pay over their own road and they claimed it. I am not speaking by the record about that, although I am very strongly of that impression.

X Q. Was the method and arrangement so far as you know, in any — changed by the presentation of this paper to you?

A. I think not, sir.

X Q. Where did you, as president of the railroad company go to make your negotiations concerning this matter; to what city?

A. I went to Philadelphia.

X Q. To what officers there?

127 A. To the Pennsylvania railroad office.

X Q. In that connection I will ask you who you met there in these negotiations?

A. I have stated before that I first met Mr. Scott, Mr. Thomas Scott, who was then president of the Pennsylvania Company, and afterwards I met Mr. Roberts and Mr. Cassatt.

X Q. Did you meet Mr. Kneass and Strickland?

A. I did not.

X Q. Did you ever meet Josiah Bacon?

A. I think not. I do not remember of having met them unless they were some of the officers around there. They were not in the discussion at all.

X Q. Did Mr. Scott and Mr. Roberts hold themselves out as authorized to deal with you, touching this matter?

A. They did, undoubtedly.

X Q. Were the engagements that they entered into carried out?

A. Yes, sir; so far as they were understood.

X Q. I will ask you one other question: Do you know John H. Bruce, the engineer who has just testified?

A. I do, sir; I knew his father before him.

X Q. How long have you known Mr. Bruce?

A. I don't know how long; long enough to know a good deal about him.

X Q. Have you known him, boy and man?

A. Yes, sir; he was regarded as one of our best men when he was on the railroad.

X Q. He was an employé of the Virginia Midland railroad during your administration as president and receiver?

A. Yes, sir; part of the time.

X Q. Do you know his general reputation in the community in which he lives?

A. I always heard that he was a highly respectable and peaceful man.

X Q. Will you please state now what his character is for trustworthiness and truth.

128 Mr. TOTTEN: Is that a proper question? There has been no assault made upon his reputation.

The foregoing question is ruled out by the court.

And the said plaintiffs also gave in evidence to the jury a special notice, dated June 19, 1884, in reference to the management of trains, which special notice is in the words and figures following, to wit:

Baltimore & Potomac R. R. Co., Alexandria & Washington R. R. Co., Alexandria & Fredericksburg Railway Co.

Special Notice.

Automatic electric signals have been erected on either side of Four-mile run arch on the A. & W. R. R., to govern the movement of trains through the arch, and will be placed in service on Monday, June 23, 1884. The signal on the north side of arch governs south-bound trains only, and the signal on the south side for north-bound trains only. All trains must observe rule No. 90, Book of Rules, and approach these signals cautiously, expecting to find them blocked, and not allow the engine to pass them until an open or clear signal is shown. Should the signals fail to work, trains must not proceed without sending a man ahead to flag any train approaching on the opposite track.

H. H. CARTER,
Superintendent.

Office of the superintendent, Wilmington, Del., June 19, 1884.

The plaintiff thereupon, and after the evidence set out in the foregoing bills of exceptions, which are hereby made a part hereof, further to show that the automatic electric signals referred to were erected and put in use before the accident, and about June 19th, 1884, that said signals showed to the engineer of the north-
129 bound passenger train, when he approached the gauntlet, a safety or white signal (being a white light) which gave him the right to pass through the gauntlet without stopping, *and* thereupon called as a witness John H. Bruce, who ran the engine of the Virginia Midland train at the time of the said accident, who was asked by the plaintiffs, notwithstanding the objection of the defend-

ants, in respect to Mr. Sharpe, the train master at the Baltimore & Potomac depot:

"Question. What authority did he have or exercise in relation to those roads?" (The Baltimore & Potomac Railroad Company, the Alexandria & Fredericksburg Railway Company and the Alexandria & Washington Railroad Company.) To which the witness answered, "He, Sharpe, had charge of all the trainmen that were employed there."

To which question and answer the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, objected, which objection was by the court overruled, to which ruling of the court the said counsel for the said defendants then and there excepted, and the exception was, at the time, noted on the minutes of the court, and the said counsel prays the court to sign and seal this their third bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs, in support of the issues on their part joined, having given testimony tending to show there was erected at Four-mile run, in June, 1884, electric signals to control the running of trains through the gauntlet, asked the witness Bruce, notwithstanding the objections of the defendants, "What, if anything, did Mr. Sharpe ever tell you about these signals? What instructions did Mr. Sharpe give you
130 in relation to these signals?" To which the counsel for all the defendants in both suits, except the Virginia Midland railway, objected, which objection was by the court overruled, and the witness answered: "On one occasion he told me that the signals were out of order. On several other occasions when there was anything wrong with them he used to either notify me in person or send a piece of paper with a few lines on it stating whether they were in order or not. If they had been out of order he would say they were all right."

To which question and answer the said counsel for the said defendants then and there objected, but the court overruled the said objection, and the said counsel excepted, and the exception was, at the time, noted on the minutes of the court, and the said counsel pray the court to sign and seal this their fourth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs, to maintain the issues on their part joined, further asked the said witness, John H. Bruce, who had already given testimony tending to show that the pilot, or Conductor Bennett, had given him on the occasion

of the collision, the order: "All right! Go ahead!" when the train left Alexandria, but gave him no other order, and did nothing thereafter in relation to the running of the train, was asked by the counsel of the Virginia Midland Railway Company:

Question. "Whether or not Bennett made any complaint as to the time he made;" which question was immediately modified as follows: "Did Mr. Bennett make any complaint to you?" which question was then further modified as follows: "Did Mr. Bennett ever complain to you about the loss of time on the road be-
131 tween Alexandria and Washington—I mean your running of the train under this schedule?" To which the witness answered: "I cannot particularly say that it was Bennett; I cannot say it was Bennett right square out, but the pilot—whoever he might have been—there was several of them—did ask me several times why time was lost."

To which question and answer the counsel for all the defendants in both suits, except the Virginia Midland railway, at the time thereof objected, which objection was by the court overruled, to which ruling the said counsel for the said defendants then and there excepted, and the exception was, at the time, noted on the minutes of the court, and the said counsel pray the court to sign and seal this their fifth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bill of exceptions, which are made a part hereof, the defendant, The Virginia Midland Railway Company, in order to maintain the issues on its part joined, on cross-examination asked the said witness, Bruce, who had given testimony tending to show that prior to the erection of the electric signals a different method had been in use for conducting trains through the gauntlet prior to 1884, and that no flagman was used. Question: "What was the method of getting through the gauntlet before the erection of the signals?" The witness answered: "Passenger trains had the superior right over freight trains. Freight trains were considered as second-class trains, and extras were considered as second-class trains. When we arrived at that point and could not get through for a passenger train which was late, we waited there until the passenger train came through."

To which question and answer the said counsel for all the defend-
ants in both suits, except the Virginia Midland Railway
132 Company, objected, at the time thereof, which objections were by the court overruled, to which ruling of the court the said counsel for the said defendants then and there excepted, and the said exception was, at the time, noted on the minutes of the court, and the said counsel pray the court to sign and seal this, their sixth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the defendant, The Virginia Midland Railway Company, in order to maintain the issues on its part joined, further asked the said witness, John H. Bruce, on cross-examination, notwithstanding defendants' objections:

"I will ask you whether or not in running a north-bound passenger train between Alexandria and Washington, you did not frequently pass trains waiting for you or the north side of the arch?" To which question the witness answered: "Yes, sir." To which question and answer the counsel for all the defendants in both cases, except the Virginia Midland railway, at the time thereof, objected, and the said objection was by the court overruled, to which ruling of the court the said counsel for the said defendants then and there excepted, and the exception was at the time thereof, noted on the minutes of the court, and the said counsel pray the court to sign and seal this their seventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which *is* made a part hereof, the plaintiffs therein having introduced evidence tending to show that John S.
133 Lieb, as agent of the Alexandria and Washington Railroad Company, was entitled to receive drafts proved by the United States for said transportation of the United States mail, the said plaintiffs having paid the due execution by the said railroad company of the same, and the filing thereof in the Post Office Department and that payments in pursuance of said paper had been made to Leib down to the date of the accident and afterwards, offered in evidence a certain paper-writing in the words and figures following, to wit:

OFFICE OF THE BALTO. & POTOMAC R. R. CO.,
BALTIMORE, *April* 21, 1875.

I, John Crow, secretary of the said company, do hereby certify that the following is a true copy of the record of the proceedings of the directors of the company held at the office of the company on the 21st day of April, 1875:

Resolved, That John S. Leib, treasurer of the company, be and he is hereby appointed agent of the company to collect the moneys that may now be due or that may hereafter become due for the transportation of United States mail on the Baltimore & Potomac railroad, and to receipt for the same on account of this company, as its agent. I further certify that the signature of said John S. Leib enclosed in brackets is his own handwriting.

(Signed) [JOHN S. LEIB,]
Agent for B. & P. R. R. Co.

In witness whereof, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 21st day of April, 1875.

[B. & P. R. R. Co. Seal.]

(Signed) JOHN CROW,
Secretary of the Balto. & Potomac R. R. Co.

To the introduction in evidence of which said paper-writing the counsel for all the defendants in both suits, except the Vir-
134 ginia Midland Railway Company, objected, which objection was by the court overruled, and the said paper-writing allowed to be introduced in evidence, to which ruling of the court said counsel of the said defendants then and there excepted, and the exception was, at the time, noted upon the minutes of the court, and the said counsel pray the court to sign and seal this their eighth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes and after the signing and sealing of the foregoing bills of exceptions which are made a part hereof, the said plaintiffs, having made preliminary proof as stated in the last preceding exception, also offered in evidence, to maintain the issues on their part joined, a certain other paper-writing in the words and figures following, to wit:

State of Maryland, office of the Alexandria & Washington R. R. Co.

BALTIMORE, *Nov. 27th*, 1876.

I, John Crow, secretary of the said company, do hereby certify that the following is a true copy of the record of the proceedings of the directors of the company at a meeting held at the office of the Pennsylvania R. R. Co., Philadelphia, Pa., on Friday, Nov. 24, 1876, at 1.30 o'clock, p. m. On motion of John Crow, duly seconded, it was resolved that John S. Leib be appointed agent to receive and receipt for moneys due or to become due the company for transportation of mail between Washington, D. C., and Alexandria, Va. I further certify that the signature of said John S. Leib, agent as aforesaid, enclosed in brackets below, is his own handwriting.

[JOHN S. LEIB,]
Agent of the Alexandria & Washington R. R. Co.

135 In witness whereof I have hereunto subscribed my name and affixed the proper seal of the said company this 27th day of November, A. D. 1876.

[Seal of the A. & W. Co.]

(Signed) J. CROW,
Sec'y of the Alexandria & Washington R. R. Co.

To the introduction in evidence of which paper-writing the counsel for all the defendants in both causes, except the Virginia Mid-

land railway, objected, which objection was by the court overruled, and the said paper-writing was allowed to be read in evidence, to which ruling of the court the said counsel for the said defendants then and there excepted, and the said exception was at the time noted on the minutes of the court, and the said counsel pray the court to sign and seal this, their ninth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bill of exceptions, which are made a part hereof, the plaintiffs, to further maintain the issues on their part joined, having introduced evidence tending to show that the United States mail was carried between Charlotte, North Carolina, and Washington, District of Columbia, as alleged in the plaintiffs' declaration, on the Virginia Midland road, and on the north-bound train of that road, which collided with the south-bound fast-freight train, having proved the due execution and endorsements, and that they represented the entire compensation for said quarter for carrying the United States mail by railroad between Washington and Alexandria, offered in evidence three drafts for the quarter beginning January 1st and ending March 31st, 1885, paid for carrying said mail between Alexandria and Washington, which drafts were in the words and figures following, to wit:

136 "POST OFFICE DEPARTMENT.

"*Warrant of the Treasury of the United States.*

"Pay to John S. Lieb, agent of the Alexandria and Washington Railroad Co., or order, forty-three and $\frac{75}{100}$ dollars.

"A. D. HAZEN,
"*Third Ass't Postmaster General.*

"Directed to the treasury of the United States at Baltimore.

"(Signed) D. McCONVILLE,
"*Auditor of the Treasury for the Post Office Department.*

And countersigned—

"O. E. GRAVES,
"*Ass't Treasurer of the United States.*"

The second of said orders was for $208.75, and the third for $455.80 and each was endorsed: "Pay to First National Bank of Baltimore, or order, for account of Alexandria and Washington R. R. Co. J. N. Du Barry and John C. Green, trustees; J. S. Leib, treasurer."

Below is signed: John S. Leib, agent of the Alexandria and Washington Railroad Company." Underneath, "J. R. Sprigg."

To the introduction of which drafts in evidence and the reading of the same in evidence to the jury the counsel for all the defendants in both causes, except the Virginia Midland railway, objected,

which objection was by the court overruled, and the same were allowed to be read to the jury, to which ruling of the court the said counsel for the said defendants then and there excepted, and the exception was at the time noted on the minutes of the court, and the said counsel for said defendants pray the court to sign and seal this their tenth bill of exception, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

137 And it was thereupon further shown by the plaintiffs in evidence after the evidence set out in the foregoing bills of exceptions which are made a part hereof, that the reason why the said drafts were made payable to the order of Leib, was: "That evidence was furnished the department under seal that Mr. Leib was treasurer of those roads, and that the drafts which belonged to the Alexandria and Washington railroad was settled through the accounting officer of the Alexandria and Fredericksburg railway, Mr. Leib."

Be it remembered that at the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs, to maintain the issues on their part joined, having introduced George C. Wilkins as a witness in their behalf, and who testified in their behalf, tending to show that one J. R. Wood was the general passenger agent of the Pennsylvania Railroad Company; that Charles E. Pugh was a general manager of said company, and that John S. Leib was the treasurer of the Baltimore and Potomac Railroad Company, and that John E. Crow was the secretary of the Alexandria and Washington and the Baltimore and Potomac railroad-, all the defendants, except the Virginia Midland Railroad Company, to maintain the issue on their part joined, asked the witness, Wilkins, on cross-examination:

"How did it come about that the persons whose names you have mentioned, two of them you say were officers of the Pennsylvania Railroad Company, were managing, or had anything to do with the management of the Alexandria and Washington Railroad Company or the Alexandria and Fredericksburg Railway Company?'

138 To which question the counsel for the plaintiffs in both causes objected, which objection was by the court sustained, and the said defendants, above named, duly excepted to such ruling at the time, and the said exception was noted on the minutes of the court; whereupon the said counsel for the said defendants having asked the said witness, on further cross-examination:

Question. "What office do you say was held by Mr. Wood?"
Answer. "General passenger agent."

And then said counsel asked the witness:

Q. "Of what road?
A. A general passenger agent of the Pa. R. R. Co.; the North

Cent., Phil., W. & Balt. and the Baltimore & Potomac Railroad Companies."

To which last question and answer the counsel for the plaintiffs in both causes objected, and the objection was by the court sustained, and the said answer was excluded, and then the said defendants excepted to such ruling of the court, and the said exception was duly noted on the minutes of the court at the time; whereupon the said counsel for the said defendants asked the said witness, on further cross-examination:

Question. "What were the duties of Mr. Wood?"

To which question the counsel for the plaintiffs in both causes objected, which objection was by the court sustained, and to each and every of the said three rulings of the court sustaining said objections and excluding each of said questions and answers the said counsel for the said defendants duly and at the time and times thereof excepted, and the said exceptions were, at the time, noted on the minutes of the court, and the said counsel for the defendants *said* pray the court to sign and seal this their eleventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

139 Be it remembered that at the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part *of* hereof, the plaintiffs to maintain the issues on their part joined, having introduced testimony tending to show that the said J. R. Wood was general passenger agent, and Chas. E. Pugh, gen. manager for the Pennsylvania Railroad Company, offered as evidence and to read the same to the jury, having first proved the publication of said advertisement and the payment therefor as set forth in a subsequent bill of exceptions hereto attached, a certain advertisement published in "The Star" newspaper of the city of Washington, dated February 19th, 1885, purporting to be signed by the said Wood, which advertisement was in the words and figures following, to wit:

The great Pennsylvania route to the northwest and southwest. Double track. Splendid scenery. Steel rails. Magnificent equipment.

In effect February 2, 1885.

Trains leave Washington, from station, corner 6th & B streets, as follows:

For Pittsburgh and the west, Chicago limited express of palace sleeping cars at 9.40 a. m. daily; fast line 9.40 a. m. daily to Cincinnati and St. Louis, with sleeping cars from Harrisburg to Cincinnati, and hotel cars to St. Louis; daily, except Saturday, to Chicago, with sleeping cars, Altoona to Chicago, western express at 7.40 p. m. daily with palace cars to Pittsburgh. Also connect daily for Chicago, with sleeping car, Pittsburgh to Chicago. Mail express, 10.00 p. m.

daily for Pittsburgh and the west, with palace sleeping car, Washington to Chicago.

140 Baltimore and Potomac railroad.

For Erie, Canandaigua, Rochester, Buffalo, Niagara, 10.00 p. m. daily, except Saturday, with palace cars, Washington to Rochester.

For Williamsport, Lock Haven and Elmira, at 9.40 a. m. daily, except Sunday.

For New York and the east: 7.15, 8.30 and 11.00 a. m., 2.00, 4.00, 10.00 and 11.15 p. m. Limited express on Pullman parlor cars, 9.40 a. m. daily, except Sunday.

For Boston without change, 2.00 p. m. every week day. On Sunday, 4.00 p. m.

For Brooklyn, N. Y., all through trains connect at Jersey City with boats of Brooklyn annex, affording direct transfer to Fulton street, avoiding double ferriage across New York city.

For Philadelphia, 7.15, 8.30, and 11.00 a. m., 2.00, 4.00, 6.00, 10.00 and 11.15 p. m. On Sunday, 4.00, 6.00, 10.00 and 11.15 p. m. Limited express 9.40 a. m. daily, except Sunday.

For Baltimore, 6.35, 7.15, 8.30, 9.40 and 11.00 a. m., 12.05, 2.00, 4.00, 4.25, 4.40, 6.00, 7.40, 10.00 and 11.15 p. m. On Sunday, 9.40, 11.00 a. m.; 4.00, 6.00, 7.40, 10.00 and 11.15 p. m.

For Pope's Creek line: 7.15 a. m. and 4.40 p. m. daily, except Sunday.

For Annapolis: 6.35 a. m., 12.05, and 4.25 p. m. daily, except Sunday; on Sunday, 4.00 p. m.

Alexandria and Fredericksburg railway and Alexandria and Washington railroad.

For Alexandria: 6.00, 7.00, 9.25, 11.01, and 11.35 a. m.; 2.05, 4.26, 4.45, 6.00, 8.05 and 11.35 p. m.; on Sunday at 6.00, 9.25, 11.01 a. m. and 8.05 p. m.

For Richmond and the south: 6.00 and 11.01 a. m. daily, and 4.45 p. m. daily, except Sunday.

Trains leave Alexandria for Washington: 6.05, 8.00, 10.00, 10.10 a. m., and 12.10 midnight (except Sunday); on Sunday at 8.00 and 10.10 a. m., 7.05 and 10.40 p. m., and 12.10 night.

141 Tickets and information at the office, northwest corner of 13th street and Pennsylvania avenue, and at the station, where orders can be left for the checking of baggage to destination from hotels and residences.

J. R. WOOD,
General Passenger Ag't.
CHAS. E. PUGH,
General Manager.

To the introduction of which said advertisement and to the reading of the same to the jury the counsel for all the defendants in both causes, except the Virginia Midland Railway Company, objected, which objection the court overruled, and allowed the said

advertisement to be read to the jury in evidence, to which ruling of the court the said counsel for the said defendants then and there excepted, and the exception was, at the time, noted on the minutes of the court, and the said counsel for the said defendants pray the court to sign and seal this their twelfth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the foregoing bills of exceptions, which are hereby made a part hereof, the plaintiffs, to maintain the issues on their part joined, having introduced testimony tending to show who paid the employees of the different companies made defendants, and that some of the said employees were paid by some person from what was known as a pay car, the said plaintiffs asked Charles L. Stevens, a witness produced by the plaintiffs, if he knew H. H. Carter, whether he had any connection with the payment or the pay car, and where the pay car came from, whether it came from the East or from the South, and whether it went farther south than Washington; whether any name was painted on the car, or engine that hauled the car, and whether there was any sign or name of a company on the car, or "anything of that sort" (to indicate to what road it belonged), and whether he noticed
142 who were the employees of the company in charge of the car, brakeman, engineer, and conductor; "Did you notice them?"

To which question the counsel for all the defendants, excepting the Virginia Midland railway, objected, which objection was by the court overruled, and the witness was permitted to answer and he said that there was a conductor and brakeman and an engineer in charge of the pay car; that the engineer had no uniform; that the conductor and brakeman had a uniform on like all the men in the employ of the Pennsylvania railroad—a blue suit with silver buttons. To which ruling of the court, allowing the said questions to be put to the witness and to the receiving of the said answer, the counsel for the said defendants then and there excepted, and the exception was, at the time, noted on the minutes of the court, and the said counsel for the said defendants pray the court to sign and seal this their thirteenth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs, to maintain the issues on their part joined, having introduced evidence tending to show that there had been prepared and delivered a schedule (No. 3), or time-table for the government of all trains passing over the tracks between Alexandria and Washington, which is the same schedule or time-table containing the rules and regulations set forth in the defendants' —— bill of exceptions, and which is

made a part of this bill of exceptions, called as a witness William H. Gibson, and asked him whether he printed that table, and at whose instance he printed it.

To which question the counsel for all the defendants, except the Virginia Midland railway objected. Whereupon the ques-
143 tion was modified by the plaintiffs, and the witness was asked: "At whose instance did you print that, and who paid you for it?"

To which question, so amended, the said counsel for the said defendants objected. Which two objections were by the court severally overruled at the several times thereof, and the witness was allowed to answer, and did answer: "We charged it to the Alexandria and Fredericksburg road."

The witness was then further asked: "Where did the check come from that paid you?"

To which question the said counsel also objected, and the witness was further asked:

Question. "Look at this paper, Mr. Gibson, and tell me if that is the receipt you gave for the bill?" Which bill was produced by the defendants on notice and demand of the plaintiffs, and is in the words and figures following, to wit:

"No. 43.

Alexandria & Fredericksburg R. W. Co., J. N. Du Barry and Jno. P. Green, trustees, to Gibson Brothers, Dr., No. 1238 Penna. Ave., Washington, D. C.

Mem., No. 330.

		Dolls.	Cts.
	For the following as per bill rendered, certified by H. F. Kinney, gen'l sup't, and filed in auditor's office at Baltimore, viz:		
1884.			
Aug. 29	P't'g 600 copies time-table, $36.00. Paper and press-work, $16.00	52	00
Oct. 10	P't'g 600 copies time-table, $1.75. Paper and press-work, $16.00	17	75
	Stand. matter, Aug. 30 to Oct. 11, 6 weeks, at 70c	4	20
Nov. 1	Stand. matter, Oct. 11 to Nov. 1, 4 weeks, at 70c	2	80
	P't'g 600 copies time-table, $4.25. Paper and press-work, $16.00	20	25
		97	00

144 I certify that the above account is correct; that the items therein specified were duly authorized and contracted on favorable terms, and have been received for the use and benefit of the trustees of the Alexandria and Fredericksburg Railway Co.

A. W. SUMNER,
Purchasing Agent.

The above account is duly authorized; it has been examined by me, found correct, and is hereby approved.

J. P. KERR, *Auditor.*

Received Feb'y 19, 1885, of J. S. Leib, local treasurer of the trustees of the Alexandria and Fredericksburg R. W. Co., ninety-seven and $\frac{00}{100}$ dollars, in full of the above account.

$97.00. GIBSON BROS.

Read this.—The above receipt must be dated and signed by the party in whose favor this voucher is made; or when signed by another party, the authority for so doing must in all cases accompany it; and this receipt must not be cut off from the body of the voucher."

Answer. "Yes, sir."

Question. "To whom did you deliver the bill when you delivered it?"

Answer. "We delivered it at the Baltimore and Potomac station here."

Whereupon the said counsel for the said defendants objected to the introduction of the said testimony, which objection as to each question, at the time thereof, and the answers thereto, and the testimony so given, were by the court overruled, to which ruling of the court the counsel for the said defendants then and there excepted, and the exception was, at the time, noted upon the minutes
145 of the court, and the counsel for the said defendants pray the court to sign and seal this, their fourteenth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Thereupon the counsel for the plaintiffs in both cases said: "I want the pay-roll for the month of January and February, upon which Charles Bennett, George C. Frere, Thomas Maloney, Andrew J. Augur, Charles L. Stevens and Joseph A. Sharpe, all of whom were trainmen on the trains in the collision, except Sharpe, who was train master between Washington and Alexandria, were paid, and the drafts that paid them;" which pay-rolls were then produced by defendants, and were by the plaintiffs given in evidence to the jury, and were in the words and figures following, to wit:

(Endorsed:) Alexandria & Fredericksburg railway; J. N. Du Barry and Jno. P. Green, trustees; conducting transportation pay-roll; No. 3, January, 1885, $545.09; paid checks on Citizens' National bank, Washington, D. C.; Nos. 32 to 43.

146 ALEXANDRIA & FREDERICKSBURG RAILWAY CO.—J. N. DU BARRY AND JNO. P. GREEN, TRUSTEES.

Memo. No. 3. January 31st, 1885. Pay-roll No. 3.

CONDUCTING TRANSPORTATION.

I acknowledge to have received from J. S. Lieb, local treasurer of the trustees of the Alexandria & Fredericksburg Railway Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the trustees of the Alexandria & Fredericksburg Railway Company, up to and including the date of this pay-roll.

Mem. No. 3.	Names.	Occupation.	Amount paid.	Dolls.	Cts.	Signatures.
Uniform $1.25	1 R. B. Harrison....	Pilot Mid. pass'r..... A. & W. pass'r cond'r.... A. & F. pass'r cond'r.....	Seventy-eight 88-100 dollars..	78	88	1 R. B. Harrison.
Uniform $14.25	2 W. H. H. Gould..	" "	Eighty-one 29-100 " ..	81	29	2 W. H. H. Gould.
	3 J. H. Bartlett.....	" "	Seventy-eight 65-100 " ..	78	65	3 Jno. H. Bartlett.
	4 Theodore Ketcham	A. & W. bagg. master..... Pilot Mid. pass'r..... A. & W. pass'r cond'r.....	Ninety-two 90-100 " ..	92	90	4 Theo. Ketcham.
	5 S. H. Garnett.....	A. & W. pass'r brakeman.. A. & W. bagg. master.....	Forty-four 84-100 " ..	44	84	5 S. H. Garnett.
Uniform $1.25	6 John West.....	A. & F. pass'r brakeman.....	Forty-three 75-100 " ..	43	75	6 J. West.
	7 George Adams....	" "	Forty-five " ..	45	00	7 Geo. Adams.
	8 A. L. Otterback...	A. & W. bagg. master..... A. & W. pass'r brakeman..	Forty-one 26-100 " ..	41	26	8 A. L. Otterback.
	9 L. J. Ahern.....	" "	Three 19-100 " ..	3	19	9 L. J. Ahern.
	10 W. W. Rollow....	" "	One 16-100 " ..	1	16	10 W. W. Rollow.
	11 C. S. Bennett.....	A. & W. cond'r.....	Seventeen 42-100 " ..	17	42	11 C. S. Bennett.
	12 H. H. Carter.....	For company.....	Sixteen 75-100 " ..	16	75	12 H. H. Carter.
				$545	09	

I certify that the above-named persons have been diligently employed in the service of the trustees of the Alexandria & Fredericksburg Railway Company during the period for which payment is made as above.

Examined and approved:
J. P. KERR, *Auditor.*

H. F. KENNEY, *General Superintendent.*

(Endorsed:) Alexandria & Fredericksburg railway; J. N. Du Barry and Jno. P. Green, trustees; conducting transportation pay-roll; No. 6, February, 1885, $561.14; paid checks on Citizens' National bank, Washington, D. C.; Nos. 127 to 140.

147 ALEXANDRIA & FREDERICKSBURG RAILWAY CO.—J. N. Du Barry and Jno. P. Green, Trustees.

February 28th, 1885. Pay-roll No. 6.

Conducting Transportation.

I acknowledge to have received from J. S. Lieb, local treasurer of the trustees of the Alexandria & Fredericksburg Railway Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the trustees of the Alexandria & Fredericksburg Railway Company, up to and including the date of this pay-roll.

Mem. No. 3.		Names.	Occupation.	Amount paid.	Dolls.	Cts.	Signatures.
Uniform $14.25	1	R. B. Harrison	Pilot Mid. pass'r. / A. & F. pass. cond'r.	Sixty-two 19-100 dollars	62	19	1 R. B. Harrison.
Uniform $14.25	2	W. H. H. Gould	" "	Sixty-six 11-100 "	66	11	2 W. H. H. Gould.
	3	John H. Bartlett	" "	Seventy-nine 29-100 "	79	29	3 Jno. H. Bartlett.
Uniform $10.71 G	4	C. S. Bennett	" " / A. & W. pass'r cond'r	Eighty-nine 85-100 "	89	85	4 C. S. Bennett.
	5	Theodore Ketcham	A. & W. pass'r cond'r / Pilot Mid. pass'r / A. & W. bagg. master	Sixty-seven 93-100 "	67	93	5 Theo. Ketcham.
	6	S. H. Garnett	A. & W. bagg. master / A. & W. pass'r brakeman	Forty-four 39-100 "	44	39	6 S. H. Garnett.
	7	John West	A. & F. pass'r brakeman	Forty-five "	45	00	7 J. West.
	8	George Adams	" "	Forty-five "	45	00	8 Geo. Adams.
	9	A. L. Otterback	A. & W. bagg. master / A. & W. pass'r brakeman	Thirteen 97-100 "	13	97	9 A. L. Otterback.
	10	W. B. Baker	" "	Two 41-100 "	2	41	10 Wm. B. Baker.
	11	L. J. Ahern	" "	One 41-100 "	1	45	11 L. J. Ahern.
	12	T. O. Berry	" " / A. & F. pass'r brakeman	Two 90-100 "	2	90	12 T. Owen Berry.
	13	W. W. Rollow	A. & W. pass'r brakeman	One 29-100 "	1	29	13 W. W. Rollow.
	14	H. H. Carter	For company	Thirty-nine 36-100 "	39	36	14 H. H. Carter.
					$561	14	

I certify that the above-named persons have been diligently employed in the service of the trustees of the Alexandria & Fredericksburg Railway Company during the period for which payment is made as above.

Examined and approved: J. P. KERR, *Auditor.* H. F. KENNEY, *General Superintendent.*

THOMAS W. JONES.

85

(Endorsed:) Alexandria & Fredericksburg Railway; J. N. Du Barry and Jno. P. Green, trustees; conducting transportation pay-roll; No. 2, January, 1885; $420.16; paid checks on Citizens' National bank, Washington, D. C.; Nos. 16 to 31.

148 ALEXANDRIA & FREDERICKSBURG RAILWAY CO.—J. N. Du Barry and Jno. P. Green, Trustees.

January 31st, 1885. Pay-roll No. 2.

Conducting Transportation.

I acknowledge to have received from J. S. Lieb, local treasurer of the trustees of the Alexandria & Fredericksburg Railway Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the trustees of the Alexandria & Fredericksburg Railway Company, up to and including the date of this pay-roll.

Mem. No. 2.	Names.	Occupation.	Amount paid.	Dolls.	Cts.	Signatures.
1	Andrew J. Augur	A. & F. fr't cond'r	Forty-eight 10-100 dollars	48	10	1 A. J. Augur.
2	A. H. Neff	" " "	Sixty-two 40-100 "	62	40	2 A. H. Neff.
3	R. B. Smith	" " "	Ten 40-100 "	10	40	3 R. B. Smith.
4	N. B. Shirley	Pilot Mid. pass'r... A. & F. fr't cond'r. " flagman	Sixty-four 46-100 "	64	46	4 N. B. Shirley.
5	Frank G. Stuart	" "	Forty-eight 60-100 "	48	60	5 F. G. Stuart.
6	W. T. Miles	" " brakeman	Forty 80-100 "	40	80	6 W. T. Miles.
7	C. L. Stevens	" "	Thirty-five 5-100 "	35	05	7 C. L. Steven.
8	J. H. Allman	" "	Twenty-eight 80-100 "	28	80	8 J. H. Allmann.
9	H. B. Clagett	" "	Thirty-five 20-100 "	35	20	9 H. B. Clagett.
10	George E. Miller	" "	Eight 80-100 "	8	80	10 George E. Miller.
11	Joseph W. Sorrell	" "	Eleven 20-100 "	11	20	11 J. W. Sorrell.
12	Charles Hilleary	" "	Twelve 80-100 "	12	80	12 Chas. Hilleary.
13	W. B. Handy	" "	Eight "	8	00	13 Wm. B. Handy.
14	R. T. Matthews	" "	Three 20-100	3	20	14 R. T. Matthews.
15	George Bresnahan	" "	One 60-100 "	1	60	15 Unclaimed. Returned treas.
16	H. H. Carter	For company	75-100 "		75	16 H. H. Carter.
				$420	16	

I certify that the above-named persons have been diligently employed in the service of the trustees of the Alexandria & Fredericksburg Railway Company during the period for which payment is made as above.

Examined and approved: J. P. KERR, *Auditor.* H. F. KENNEY, *General Superintendent.*

149 The said counsel also required, and there was produced, and by the plaintiffs given in evidence two pay-rolls of the Baltimore and Potomac railroad (motive power) for the months of January and February, 1885, which were in the words and figures following, to wit:

150 No. 4. BALTIMORE AND POTOMAC RAILROAD COMPANY.

Washington shop. February 28th, 1885. Pay-roll No. 20.

MOTIVE POWER.

I acknowledge to have received from the treasurer of the Baltimore & Potomac Railroad Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the Baltimore & Potomac Railroad Company, up to and including the date of this pay-roll.

Mem. No. —. Names.	Occupation.	Amount paid.	Dolls.	Cts.	Signatures.	Witnesses present.
1 George B. Stevens..	Fr't fireman ...	Forty-three 35-100 dollars..	43	35	1 Geo. B. Stevens.....	
2 Jesse W. Ritter	Pass. fireman ..	Forty-one 48-100 " ..	41	48	2 J. W. Ritter	
3 John W. Rullman..	Pass. eng'man .	One hund. eight 75-100 " ..	108	75	3 Jno. W. Rullman.....	
4 Jerry Desmond	" " .	One hund. fourteen 50-100 " ..	114	50	4 J. Desmond.....	
5 Joseph S. Black....	Fr't " .	Fifteen " ..	15	00	5 Joseph S. Black.....	
6 Francis T. Bowler..	" " .	Ninety-three 56-100 " ..	93	56	6 F. T. Bowler.....	
7 Chas. W. Werden..	Pass. fireman ..	Seventy-six 46-100 " ..	76	46	7 C. W. Werden	
8 Charles W. Fenton.	" " ...	Sixty-four 12-100 " ..	64	12	8 C. W. Fenton.....	
9 George A. Frere....	Fr't eng'man ..	Fifty 34-100 " ..	50	34	9 Ida V. Frere, widow of Geo. A. Frere.....	J. W. Lawson.
10 James H. Downs...	Fr't fireman ...	Forty-eight 94-100 " ..	48	94	10 Jas. H. Downs	
11 James M. Williams.	" " ...	Forty 12-100 " ..	40	12	11 J. W. Williams	
12 James Davis	Pass. eng'man .	Eighty-three 90-100 " ..	83	90	12 James Davis	
13 Patrick Luddy.....	" " .	Forty-six 36-100 " ..	46	36	13 Patrick Luddy.....	
14 Eugene Dishman...	Eng. cleaner...	Seven 15-100 " ..	7	15	14 Eugene Dishman.....	
15 Michael Maloney ..	" " ...	Five 72-100 " ..	5	72	15 Michael Maloney	
16 Arthur J. Jones....	Fr't fireman ...	One 70-100 " ..	1	70	16 Unclaimed. Ret'd treas.....	
17 John H. Baker.....	" " ...	Seven 65-100 " ..	7	65	17 J. H. Baker	
			$849	10		

I certify that the above-named persons have been diligently employed in the service of the Baltimore & Potomac Railroad Company during the period for which payment is made as above.

Examined and approved: J. S. RUTH, *Asst. Auditor.* H. F. KENNEY, *General Superintendent.*

(Endorsed:) Baltimore and Potomac Railroad Company. Motive-power pay-roll. No. 20, February, 1885, $849.10. Paid checks on First National bank, Balto., Nos. 1576 to 1592.

151 No. 5. BALTIMORE AND POTOMAC RAILROAD COMPANY.

Washington shop. January 31st, 1885. Pay-roll No. 6.

MOTIVE POWER.

I acknowledge to have received from the treasurer of the Baltimore & Potomac Railroad Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the Baltimore & Potomac Railroad Company, up to and including the date of this pay-roll.

Mem. No.—	Names.	Occupation.	Amount paid.		Dolls.	Cts.	Signatures.
1	Charles A. Anderson	Fr't fireman	Twelve 75-100	dollars.	12	75	1 Chas. A. Anderson.
2	William P. Porter	"	Thirty-seven 40-100	"	37	40	2 W. P. Porter.
3	John T. Monaghan	"	Fifty-four 74-100	"	54	74	3 John T. Monaghan.
4	Octavius C. Zimmerman	"	Forty-two 33-100	"	42	33	4 O. C. Zimmerman.
5	Frederick W. Wehrheim	"	Forty-nine 81-100	"	49	81	5 F. W. Mehrhein.
6	Truman D. Beckett	"	Twenty-two 63-100	"	22	63	6 T. D. Beckett.
7	Frank H. Childs	"	Forty-five 5-100	"	45	05	7 F. H. Childs.
8	William C. Jasper	"	Thirty-eight 7-100	"	38	07	8 William C. Jasper.
9	James C. Boswell	"	Thirty-one 1-100	"	31	01	9 James E. Boswell.
10	William Wagner	Yard eng'man	Ninety	"	90	00	10 William Wagner.
11	John A. Diehl	"	Seventy-five 90-100	"	75	90	11 John A. Diehl.
12	William H. Fisher	"	Eighty-seven 60-100	"	87	60	12 W. H. Fisher.
13	Robert M. Smith	"	Forty-five 60-100	"	45	60	13 R. M. Smith.
14	George Frere	"	Seventy-seven 4-100	"	77	04	14 Geo. Frere.
15	Timothy Ryan	Yard fireman	Thirty-nine	"	39	00	15 Timothy Ryan.
16	James E. Johnson	"	Forty-six 50-100	"	46	50	16 James E. Johnson.
17	Thomas Maloney	"	Thirty 75-100	"	30	75	17 Thomas Maloney.
18	Howard Redmiles	"	Forty-five 30-100	"	45	30	18 Howard Redmiles.
19	Thomas W. Bowen	Pass. eng'man	Ninety-three 16-100	"	93	16	19 Thos. W. Bowen.
20	Sylvester J. Charters	Fr't "	One hund. one 32-100	"	101	32	20 S. J. Charters.
					$1,065	96	

I certify that the above-named persons have been dil-gently employed in the service of the Baltimore & Potomac Railroad Company, during the period for which payment is made as above.

Examined and approved: J. P. KERR, *Auditor.* H. F. KENNEY, *General Superintendent.*

THOMAS W. JONES.

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(Endorsed:) Baltimore and Potomac Railroad Company. Motive power pay-roll. No. 6, January, 1885, $1,065.96. Paid checks on First National bank, Balto., Nos. 361 to 380.

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152 No. 7. BALTIMORE AND POTOMAC RAILROAD COMPANY

Washington shop. February 28th, 1885. Pay-roll No. 18.

MOTIVE POWER.

I acknowledge to have received from the treasurer of the Baltimore & Potomac Railroad Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the Baltimore & Potomac Railroad Company, up to and including the date of this pay-roll.

Mem. No.—	Names.	Occupation.	Amount paid.		Dolls.	Cts.	Signatures.	Witnesses present.
1	Charles A. Anderson	Fr't fireman	Fourteen 2-100	dollars.	14	02	1 Chas. A. Anderson	
2	William P. Porter	"	Seventy-eight 30-100	"	78	30	2 W. P. Porter	
3	James C. Boswell	"	Twenty-seven 34-100	"	27	34	3 James E. Boswell	
4	William C. Jasper	"	Forty-two 91-100	"	42	91	4 William C. Jasper	
5	John T. Monaghan	"	Fifty-eight 14-100	"	58	14	5 John T. Monaghan	
6	Octavius C. Zimmerman	"	Fifty-four 83-100	"	54	83	6 O. C. Zimmerman	
7	Charles T. Brown	"	Thirty-seven 40-100	"	37	40	7 C. T. Brown	
8	Truman D. Beckett	"	Thirty-nine 75-100	"	39	75	8 T. D. Beckett	
9	George W. Summers	"	Twenty seven 76-100	"	27	76	9 G. W. Summers	
10	William Wagner	Yard eng'man.	Eighty-four 90-100	"	84	90	10 William Wagner	
11	John A. Diehl	"	Seventy-two	"	72	00	11 John A. Diehl	
12	William H. Fisher	"	Seventy-five	"	75	00	12 W. H. Fisher	
13	Robert M. Smith	"	Sixty-seven 50-100	"	67	50	13 R. M. Smith	
Paid. 14	Timothy Ryan	Yard fireman	Thirty-one 85-100	"	31	85	14 Receipt attached	
15	James E. Johnson	"	Thirty-seven 50-100	"	37	50	15 James E. Johnson his	
16	Thomas Maloney	"	Fourteen 85-100	"	14	85	16 Stephen x Maloney mark.	Father of Thos. Maloney, dec'd. J. W. Lawson.
17	Howard Redmiles	"	Thirty-six	"	36	00	17 Howard Redmiles	
18	John T. Mahoney	"	Forty-nine 47-100	"	49	47	18 John T. Mahoney	
19	Thomas W. Bowen	Pass. eng'man	Eighty-two 96-100	"	82	96	19 Thos. W. Bowen	
20	Sylvester J. Charters	Fr't "	Eighty-six 70-100	"	86	70	20 S. J. Charters	
					$1,019	18		

I certify that the above-named persons have been diligently employed in the service of the Baltimore & Potomac Railroad Company, during the period for which payment is made as above.

Examined and approved:

—— ——, *Auditor.* —— ——, *General Superintendent.*

BALTIMORE & POTOMAC RAILROAD CO., $31.85.

MOTIVE POWER DEPARTMENT.

No. 36.

Received Wilmington, Feb. 27, 1885, of J. S. Leib, treasurer of Baltimore & Potomac Railroad Company, by the hands of H. H. Carter, sup't, the sum of thirty-one 85-100 dollars for services rendered as fireman in month of February, 1885.

Witness: G. L. LESCALLETT. TIMOTHY RYAN.

Correct:
Jesse Lescallett.

(Endorsed:) Baltimore and Potomac Railroad Company. Motive power pay-roll. No. 18, February, 1885, $1,019.18. Paid checks on First National bank, Balto., Nos. 1536 to 1555.

153 The counsel for the plaintiffs in both cases also gave in evidence to the jury pay-rolls of the Baltimore and Potomac Railroad Company (conducting transportation) dated January 31, 1885, and February, 1885, which were in the words and figures following, to wit:

CONDUCTING TRANSPORTATION.

I acknowledge to have received from J. S. Leib, treasurer of the Baltimore & Potomac Railroad Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the Baltimore and Potomac Railroad Company, up to and including the date of this pay-roll.

No.	Names.	Occupation.	Amount paid.	Am't. Dolls.	Am't. Cts.	Deductions. Dolls.	Deductions. Cts.	Am't payable. Dolls.	Am't payable. Cts.	Signatures.	Witnesses present.
1	J. K. Sharp	Ass't train mast	One hund. thirty-five dollars					135	00	1 J. K. Sharp	
2	R. H. Gemeny	Train desp'r	Ninety "					90	00	2 R. H. Gemeny	
3	J. E. Lewis	" " & op'r	Eighty "					80	00	3 J. E. Lewis	
4	A. C. Irvine	Station master	One hundred "					100	00	4 A. C. Irvine	
5	J. Fickling	Ass't station mas	Ninety "					90	0	5 J. Fickling	
6	J. H. Bartlett	" "	Two 90-100 "					2	90	6 John H. Bartlett	
7	Jacob P. Smith	Janitor	Sixty "					60	00	7 Jacob P. Smith	
8	Sarah V. E. White	Attd. ladies' room	Twenty-six "					26	00	8 Sarah V. E. White	
9	Mary S. Smith	" sleeping "	Ten "					10	00	9 Mary S. Smith his mark.	
10	William Humphrey	Cleaning room	Twenty-seven "					27	00	10 William x Humphrey	J. W. Lawson.
11	James R. Kelton	" "	Twenty-seven "					27	00	11 James R. Kelton his mark.	
12	Samuel Moulton	" station	Thirty "					30	00	12 Samuel x Moulton	J. W. Lawson.
13	Martin Perry	Porter	Thirty-three "					33	00	13 Martin Perry	
14	Joshua Davis	Ticket examiner	Fifty "					50	00	14 Joshua Davis	
15	L. E. Burkhardt	" "	Forty-six 77-100 "					46	77	15 L. E. Burkhardt	
16	W. H. Birch	" "	Fifty "					50	00	16 W. H. Birch	
17	James H. Cathell	" "	Fifty "					50	00	17 James H. Cathell	
18	J. D. Cranston	Usher	Fifty "					50	00	18 J. D. Cranston	
19	John H. Jerman	Usher	Fifty "					50	00	19 John H. Jerman	
20	C. V. Boarman	Surgeon	Thirty "					30	00	20 C. V. Boarman	
								$1,037	67		

I certify that the above-named persons have been diligently employed in the service of the Baltimore & Potomac Railroad Company, during the period for which payment is made as above.

Examined and approved : J. P. KERR, *Auditor*. H. F. KENNEY, *General Superintendent*.

(Endorsed :) Baltimore & Potomac Railroad Company. Conducting transportation pay-roll. No. 6, January, 1885, $10,37.67. Paid checks on First National bank, Balto., Nos. 88 to 107.

BALTIMORE AND POTOMAC RAILROAD COMPANY.

Pay-roll No. 23.

CONDUCTING TRANSPORTATION.

FEBRUARY 28TH, 1885.

I acknowledge to have received from J. S. Leib, treasurer of the Baltimore & Potomac Railroad Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the Baltimore and Potomac Railroad Company, up to and including the date of this pay-roll.

	No.	Names.	Occupation.	Amount paid.	Am't. Dolls	Am't. Cts.	Deductions. Dolls.	Deductions. Cts.	Am't payable. Dolls.	Am't payable. Cts.	Signatures.	Witnesses present.
	1	J. K. Sharp	Ass't train mast	One hund. thirty-five dollars					135	00	1 J. K. Sharp	
	2	R. H. Gemeny	Train despatcher	Ninety "					90	00	2 R. H. Gemeny	
	3	J. E. Lewis	Train des. & op'r	Eighty "					80	00	3 J. E. Lewis	
	4	A. C. Irvine	Station master	One hundred "					100	00	4 A. C. Irvine	
	5	J. Fickling	Ass't station mas	Ninety "					90	00	5 J. Fickling	
	6	Jacob P. Smith	Janitor	Sixty "					60	00	6 Jacob P. Smith	
	7	Sarah V. E. White	Attd. ladies' room	Twenty four 14-100 "					24	14	7 Sarah V. E. White	
	8	Frances A. Barry	" " "	One 86-100 "					1	86	8 Frances A. Barry	
	9	Mary S. Smith	" sleeping "	Ten "					10	00	9 Mary S. Smith	
	10	William Humphrey	Cleaning room	Twenty-seven "					27	00	10 William his x Humphrey mark.	J. W. Lawson.
	11	James R. Kelton	" "	Twenty-five 7-100 "					25	07	11 James R. his x Kelton mark.	J. W. Lawson.
	12	Samuel Moulton	" station	Thirty "					30	00	12 Samuel his x Moulton mark.	J. W. Lawson.
	13	Martin Perry	Porter	Thirty-three "					33	00	13 Martin Perry	
Uniform.	14	Joshua Davis	Ticket examiner	Forty-eight 75-100 "	50	00	1	25	48	75	14 Joshua Davis	
	15	L. E. Burkhardt	" "	Fifty "					50	00	15 L. E. Burkhardt	
	16	James H. Cathell	" "	Fifty "					50	00	16 James H. Cathell	
Uniform.	17	W. H. Birch	" "	Forty-five 18-100 "	46	43	1	25	45	18	17 W. H. Birch	
	18	J. D. Cranston	Usher	Fifty "					50	00	18 J. D. Cranston	
Uniform.	19	John H. Jerman	Usher	Thirty-five 95-100 "	48	21	12	26	35	95	19 John H. Jerman	
	20	H. H. Carter	For company	Fourteen 76-100 "					14	76	20 H. H. Carter	
									$1,000	71		

I certify that the above-named persons have been diligently employed in the service of the Baltimore & Potomac Railroad Company, during the period for which payment is made as above.

Examined and approved: J. P. KERR, *Auditor*. H. F. KENNEY, *General Superintendent*.

(Endorsed:) Baltimore & Potomac Railroad Company. Conducting transportation pay-roll. No. 23, February, 1885, $1,000.71. Paid checks on First National bank, Balto., Nos. 872 to 891.

THOMAS W. JONES.

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156 The said counsel also demanded and there was by the defendants produced, and by the plaintiffs in both cases given in evidence to the jury, pay-roll of the Alexandria and Fredericksburg Railway Company, by trustees, (conducting transportation) dated February 28, 1885, which was in the words and figures following, to wit:

No. 3. February 28th, 1885. Pay-roll No. 5.

Conducting Transportation.

I acknowledge to have received from the local treasurer of the trustees of the Alexandria & Fredericksburg Railway Company, the amount opposite my name in the following list, in full of all demands for work done during regular and irregular working hours, in the service of the trustees of the Alexandria & Fredericksburg Railway Company, up to and including the date of this pay-roll.

Mem. No.—	Names.	Occupation.	Amount paid.	Dolls.	Cts.	Signatures.	Witnesses present.
	1 A. H. Neff.....	A. & F. fr't cond'r.....	Thirty-four 58-100 dollars.	34	58	1 A. H. Neff.....	
	2 Andrew J. Augur	Pilot Mid. pass'r..... A. & F. fr't cond'r.....	Fifty-four 8-100 "	54	08	2 I. Augur, widow A. J. Augur, dec....	W. W. Bowie.
	3 R. B. Smith.....	Pilot Mid. pass'r..... A. & F. fr't cond'r.....	Twenty-one 84-100 "	21	84	3 R. B. Smith.....	
	4 N. B. Shirley....	" " ..... " flagman.....	Fifty-three 38-100 "	53	38	4 N. B. Shirley.....	
	5 F. G. Stuart.....	" "	Forty-four 82-100 "	44	82	5 F. G. Stuart.....	
	6 W. T. Miles.....	" " ..... " brakeman	Thirty-nine 24-100 "	39	24	6 W. T. Miles.....	
G 15.	7 H. B. Clagett.....	" "	Thirty-six 1-100 "	36	01	7 H. B. Clagett.....	
	8 J. H. Allmann....	" "	Thirty-nine 84-100 "	39	84	8 J. H. Allmann....	
L 60.	9 C. L. Stevens....	" pass'r " ..... " fr't "	Thirty 13-100 "	30	13	9 C. L. Stevens.....	
Paid.	10 George E. Miller...	" "	Twenty-four "	24	00	10 Receipt attached..	
	11 H. H. Carter.....	For company	75-100 "		75	11 H. H. Carter.....	
				$378	67		

I certify that the above-named persons have been diligently employed in the service of the trustees of the Alexandria & Fredericksburg Railway Company, during the period for which payment is made as above.

Examined and approved: J. P. KERR, *Auditor.* H. F. KENNEY, *General Superintendent.*

(Endorsed:) Alexandria & Fredericksburg railway; J. N. Du Barry and Jno. P. Green, trustees; conducting transportation pay-roll; No. —, 18—, $—; paid checks on Citizens' National bank, Washington, D. C.; Nos. — to —.

THOMAS W. JONES.

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158 The checks for the payments referred to, called for and produced by defendants and given in evidence by the plaintiffs in both cases, are No. 1, Andrew J. Augur; No. 2, W. T. Miles; No. 3, W. T. Miles; No. 4, Andrew J. Augur; No. 5, George Frere; No. 5, George Frere, and Exhibit B, signed Isabella Miller, widow of George Miller; which are in the words and figures following, to wit:

No. 1.

Local treasurer's department, Alexa. & Fred'ksb'g R'w'y Co.

No. 16. BALTIMORE, *Jan.* 31, 1885.

Citizens' National Bank of Washington, D. C.,

For pay-roll account of the Alexandria and Fredericksburg Railway Company. J. N. Du Barry and John P. Green, trustees.

Pay to Andrew J. Augur, or bearer, on the order of H. H. Carter, the sum of forty-eight and $\frac{10}{100}$ dollars.

$48.10. J. S. LEIB,
Local Treasurer.

Endorsed on back: H. H. Carter. Citizens' National Bank of Washington City. Paid Feb. 17, 1885.

No. 4.

Local treasurer's department, Alexa. & Fred'ksb'g R'w'y Co.

No. 117. BALTIMORE, *Feb.* 28, 1885.

Citizens' National Bank of Washington, D. C.,

For pay-roll account of the Alexandria & Fredericksburg Railway Company. J. N. Du Barry and John P. Green, trustees.

Pay to Andrew J. Augur, or bearer, on the order of H. H. Carter, the sum of fifty-four and $\frac{8}{100}$ dollars.

$54.08. J. S. LEIB,
Local Treasurer.

159 Endorsed on back: H. H. Carter. Citizens' National Bank of Washington City. Paid March 23, 1885.

No. 2.

Local treasurer's department, Alexa. & Fred'ksb'g R'w'y Co.

No. 21. BALTIMORE, *Jan.* 31, 1885.

Citizens' National Bank of Washington, D. C.,

For pay-roll account of the Alexandria & Fredericksburg Railway Company. J. N. Du Barry and John P. Green, trustees.

Pay to W. T. Miles or bearer on the order of H. H. Carter the sum of forty and $\frac{80}{100}$ dollars.

$40.80. J. S. LEIB,
Local Treasurer.

Endorsed on back: H. H. Carter, J. O. Vermillion. Citizens' National Bank of Washington City. Paid Feb. 16, 1885.

No. 3.

Local treasurer's department, Alexa. & Fred'ksb'g R'w'y Co.

No. 121. BALTIMORE, *Feb.* 28, 1885.

Citizens' National Bank of Washington, D. C.,

For pay-roll account of the Alexandria & Fredericksburg Railway Company. J. N. Du Barry and John P. Green, trustees.

Pay to W. T. Miles or bearer on the order of H. H. Carter the sum of thirty-nine and $\frac{24}{100}$ dollars.

$39.24. J. S. LEIB,
Local Treasurer.

Endorsed on back: H. H. Carter, L. M. Cornwell. Citizens' National Bank of Washington City. March 18, 1885.

160 BANK OF WASHINGTON, D. C., *March* 18, 1885.

No. 5.

Treasurer's department, Balto. & Potomac R. R. Co.

No. 1584. BALTIMORE, *Feb.* 28, 1885.

First National Bank of Baltimore, Md.,

For pay-roll account of the Baltimore & Potomac Railroad Company.

Pay to George Frere, or bearer, on the order of H. H. Carter, the sum of fifty and $\frac{34}{100}$ dollars.

$50.34. N. N. HENDILL, *Cashier,*
For Treasurer.

Endorsed on back: H. H. Carter, John F. McCoy. Credit Citizens' National Bank of Washington City. Thos. C. Pearsall, cashier.

Received payment, J. SLOAN, JR., *President.*

No. 6.

Treasurer's department, Balto. & Potomac R. R. Co.

No. 374. BALTIMORE, *Jan.* 31, 1885.

First National Bank of Baltimore, Md.,

For pay-roll account of the Baltimore & Potomac Railroad Company.

Pay to George Frere, or bearer, on the order of H. H. Carter, the sum of seventy-seven and $\frac{4}{100}$ dollars.

$77.04. N. N. HENDRIL, *Cashier,*
For Treasurer.

Endorsed on back: H. H. Carter, R. A. Golden. Pay Citizens' National Bank of Baltimore, or order, for account of Central National bank, Washington city.

Received payment, J. W. QUEST, *Cashier.*

161 "EXHIBIT B."

J. N. Du Barry and John P. Green, trustees Alexandria & Fredericksburg Railway Co.

Unclaimed Wages Receipt.

No. —. C. T. department. $24.00.

Received, February 28th, 1885, of J. S. Leib, local treasurer of Alexandria and Fredericksburg Railway Co. by the hands of H. H. Carter, superintendent, the sum of twenty-four dollars, for services rendered as freight brakeman in month of February, 1884.

MRS. ISABELLA F. MILLER,
Widow of Geo. E. Miller, Deceased.

Witness:
MRS. SALLIE DAVIS.

The plaintiffs further gave evidence to the jury tending to show by the evidence of the witnesses Jones, Stewart, Bennett and Bruce, that the north-bound passenger train was not running more than from eight to twelve miles an hour at the time of the accident.

And the plaintiffs, also, during their evidence-in-chief, gave evidence in each case tending to show, that the plaintiffs were railroad postal clerks, in the employ of the Post Office Department of the United States Government, and assigned to the postal route from Washington, D. C., to Charlotte, N. C., and each of them had been for several years prior to the 19th day of February, 1885; that said route commenced at the depot on 6th and B streets in Washington, D. C., and ended at said Charlotte; that said route was by the way of Alexandria and Danville, Virginia, and that between Washington and Alexandria they were carried in cars over the tracks of the Baltimore and Potomac Railroad Company between the said 6th street depot and the south end of Long bridge over the Potomac river, and between that point and St. Asaph junction north of Alexan-
162 dria over the tracks of the Alexandria and Washington Railroad Company, and between said junction and Alexandria over the tracks of the Alexandria and Fredericksburg Railroad Company, and between Alexandria and Danville, Va., over the tracks of the Virginia Midland Railroad Company, and between Danville and Charlotte over some other road; that the postal car in which the plaintiffs were transported with the United States mail ran through without change between Washington, D. C., and Charlotte, N. C.; that the said postal car was attached to the passenger trains of the Virginia Midland Railroad Company which ran to and from Washington over the tracks aforesaid; that they were entitled to ride on the mail car with and in charge of the mail and that the

compensation paid by the Government to the railroad companies included and covered their transportation as well as the mail; that on the 19th day of February, 1885, they were in said postal car in charge of said mail, on a trip from said Charlotte to said Washington, attached to a regular passenger train of the Virginia Midland Railroad Company, and that while said train was running from Alexandria to Washington, near a place known as Four Mile run in Virginia, between 9 and 10 o'clock, p. m., of that day, it collided with a train known as the Alexandria and Fredericksburg fast freight running south from Washington over the same tracks, by means of which the two engines and several of the cars of each train and amongst them the said postal car in which plaintiffs were at the time, were badly wrecked and demolished, and plaintiffs were each badly shocked, wounded and bruised, and buried in the debris of the broken and demolished cars which immediately took fire, and being unable to extricate themselves were badly burned before they were rescued from their position, and after being taken from the wreck they were exposed for several hours to the night air which was extremely cold, and taken to Alexandria about 3 o'clock on the morning of the 20th day of February, 1885, by
163 means of all which they were very sick, sore, and lame, and their lives for a long time despaired of and that since that time they have not, nor has either of them been able to engage in their usual occupation, and that they and each of them have ever since that suffered, and still do suffer on account of said injuries, and were and are permanently and greatly disabled and shattered in body and health on account of their said injuries; but the evidence tended to show that the suffering and disability of the said Stewart was and is in a greater degree than those of the said Jones; that the said collision occurred at what is called the gauntlet, where the tracks run through an arch over which the canal passed, which arch is about 112 feet through from one face to the other, and that there is a double track from St. Asaph junction to south end of Long bridge, except through this arch, and for about 60 feet either side thereof where the tracks interlace, both tracks being laid on the same cross-ties, and in such manner that the space occupied by both is from 9 inches to a foot more than that occupied by each, and that while each train runs on its own separate track they could not pass at this place; that the said collision took place about 50 feet north of the north face of the said arch—the face nearest to Washington; that at the time of the said collision the said Virginia Midland trains were running from Alexandria to Washington over the tracks of the Alexandria and Fredericksburg, Alexandria and Washington, and Baltimore and Potomac in pursuance of an arrangement made by the Virginia Midland Co. with the parties controlling the tracks between Alexandria and Washington; that the said railroads, the Alexandria and Fredericksburg, the Alexandria and Washington and Baltimore and Potomac between Alexandria and Washington, at the time of the collision, and for a long time theretofore, were operated together by one set of officers and employees for the transportation

of persons and freight; that the conductors and brakemen en-
164 gaged in running trains over said roads between Washington and Alexandria, at the time of and for some time prior to said collision, all wore uniforms like that of the Pennsylvania railroad employees except that the buttons on said uniforms were stamped with the letters "B. and P." and the letters "A. and F." respectively; that some of the employees engaged in running trains over said roads at the time of said collision and prior thereto, and from Baltimore to Quantico, were borne upon the pay-rolls of the Baltimore and Potomac and others upon the pay-rolls of the Alexandria and Fredericksburg; but that some of them were engaged interchangeably and from time to time in running trains on all parts of the road from Baltimore to Quantico, and that in the operation of said roads south of Washington, employees of one company used the rolling stock of the other, and engines of one company hauled cars of the other; that the Pennsylvania Railroad Company sold tickets from Baltimore and Washington to points south passing over the said Baltimore and Potomac, Alexandria and Washington and Alexandria and Fredericksburg roads; that the general manager, general superintendent, superintendent, train master, auditor and treasurer, and other operating officers of the Alexandria and Fredericksburg, Alexandria and Washington and Baltimore and Potomac were the same persons; that the general ticket agent, J. R. Wood, and the general manager, Chas. E. Pugh, of the Pennsylvania Railroad Company, were also general ticket agent and general manager of the said other roads; that the officers and employees and operatives on the line at Washington and from there to Alexandria and Quantico were all paid by the same person from the same pay car which came from the east and passed along the line for that purpose and that this car was in charge of a conductor and brakeman, both wearing the uniform such as is worn by the employees of the Pennsylvania Railroad Company, except that the buttons had the letters "P. W. and B." stamped on them;
165 that the advertisement in the Washington Evening Star of the 19th day of February, 1885, set forth in one of the previous bills of exceptions hereto attached, had been standing continuously for some time prior to that date, and the bills therefor, down to and covering that period, made out by the owners of that paper against the Pennsylvania Railroad Company and sent to it at Philadelphia and by it paid; that on the arrival of the trains of the Virginia Midland Railroad Company at Alexandria they were turned over to the authorities operating the said roads between that place and Washington and run between those two points both ways under the absolute control of the said last-named parties, who had the right to and who did place a pilot in charge of said trains to run the same between said points; that said pilots were sometimes employees of the Baltimore and Potomac and sometimes of the Alexandria and Fredericksburg; that all other persons engaged in running said Virginia Midland trains were employees of the last-named company; that the pilot who took charge of the Virginia Midland train on which plaintiffs were on the 19th day of February, 1885, when it

arrived at Alexandria, and under whose direction and control it was, run from that point to the place of collision, was Chas. F. Bennett who had on at the time a uniform such as is worn by the employees of the Pennsylvania Railroad Company, except that on the buttons were the letters "B. & P," which uniform was furnished him at the depot on 6th street, in Washington, and which he paid for to the company by monthly installments deducted from his pay; that for the said month of February, 1885, and the month previous, his name was borne on the pay-rolls of and he was paid by the Alexandria and Fredericksburg Company; that the said Alexandria and Fredericksburg fast freight which collided with the said passenger train was made up at and left Baltimore on the day of the collision to run to Quantico;
that the train was a heavy one consisting of over thirty cars,
166 most of them loaded with freight, and a few empty passenger cars being taken to Alexandria for Virginia Midland Railroad Company; that said freight train was hauled by an engine called and known as an Alexandria and Fredericksburg engine, with the initials "A. & F." thereon; that the freight cars belonged to the Alexandria and Fredericksburg Railroad Company, some to Baltimore and Potomac Company, and others to different companies; that the engineer and fireman of the freight engine at the time of the collision were both on the pay-rolls of the Baltimore and Potomac Railroad Company for the months of January and February, 1885; that the conductor and brakeman were on the pay-rolls of the Alexandria and Fredericksburg Railroad Company for said months; that one of the brakemen on the freight train, who had been on the line for about eight or nine months prior to the accident, had been breaking on trains in the yard at Washington and on the line from Baltimore to Quantico, interchangeably, sometimes upon one part and sometimes upon another, and always by the orders of the same assistant train master at the Baltimore and Potomac depot; that other trainmen on that line ran interchangeably on different parts of said line from Baltimore to Quantico; that the freight train was running that night under telegraphic orders signed by H. H. Carter, superintendent, directed to the conductor and engineer of that train that they could have until 11.15 p. m., to make Franconia (a station south of Alexandria) for train 78; that there were automatic electric signals on either side of said arch to govern the running of trains through it so arranged that when a train approached within a short distance of the signal on either side it was intended to, and when in order did, cause the signal on the opposite side to show a red light; that the order signed by Carter set out in a former bill of exceptions was issued in relation to these signals; that said signals had
sometimes been out of order prior to said accident, and
167 the engineer who was running the engine hauling the Virginia Midland train at the time of the collision had been informed of this, and told by Sharp the assistant train-master at Washington that whenever they were out of order he would so inform the said engineer; that on the night of the collision said engineer had no notice or knowledge that said signals were out of

order, if they were, and that he approached the south signal with his train carefully, prepared to stop; that when the said engine of the Virginia Midland train reached and passed the south signal it was showing a white or clear light, and the engineer was running his train at the rate of about five miles an hour; that before he reached that point he saw the head-light of the freight train on the other side of the arch, and assumed that it was standing still on its own track and would continue to do so until his train had passed through; that said engineer had often before met trains at this point and passed them in the same way; that where an engine is in front of a person on the same track or a parallel track near it, it cannot be told whether it is in motion or not until you are very close to it, except by the sound, and that believing that the other train was waiting on the other side of the gauntlet, as he passed the southern signal the engineer of the passenger train, let off the brakes and ran through the gauntlet at the rate of from ten to twelve miles an hour, and did not notice that the other train was approaching him until just as he was about entering the arch, when he put on all the steam he could hoping to get through the arch and on the double track before the freight engine struck him, but they collided at a point about 50 feet north of the north face of the arch where the two tracks commenced to diverge from each other, the two engines rearing up and climbing belly to belly and falling over on the east side of the track, diagonally towards Alexandria, killing the engineer, fireman, and conductor of the freight train, who were all on the engine at the time, and also killing the fireman
168 on the passenger engine, and badly injuring the engineer; that the freight was running at the rate of from 12 to 15 miles an hour at the time of the collision; that it is a descending grade from about three-fourths of a mile north of the arch to about 500 feet from the arch, and level from there through the arch and ascending from about the south face of it for some distance going south; that as the freight engine approached the northern signal and passed it it showed a white light, and at that time the freight was running under control; that the northern signal was about 460 feet north of the north face of the arch and the south one about 660 feet south of the south face; that the mails over said route was being carried not under any express contract, but under the general statutes, and the arrangement of the Government for carrying all mail, either through or local, between Washington and Alexandria was with Alexandria and Washington road, and that road was paid for transporting the mails between Washington and Alexandria for the quarter beginning January 1st and ending March 31st, 1885, by the drafts or checks mentioned in previous bills of exceptions, and no other railroad was paid by the United States for carrying mails between said two points or any part of said distance during the same time; that the said sum so paid was divided amongst the Alexandria and Washington, Alexandria and Fredericksburg, and Baltimore and Potomac; that at about the date of the said collision and for some time prior thereto both freight and passenger trains passed over the said road between Alexandria and Washington,

some of them hauled by engines marked B. & P., some by those marked A. & F., and some passenger trains marked B. & P.; that the compensation paid by the Virginia Midland Railway Company for the privilege of running its trains between Washington and Alexandria was 35 cents per passenger and $4.00 per car-load of freight, which was paid by it periodically to J. S. Leib, the treasurer
of the Alexandria and Washington, Alexandria and Freder-
169 icksburg, and Baltimore and Potomac roads; that the place of collision is about (4) miles from south end of Long bridge.

And thereupon the testimony-in-chief of both plaintiffs having been closed, the tendency of all is as set forth in the foregoing bills of exceptions, and therefore be it remembered, that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, and after the plaintiffs had announced to the court that they had no further evidence, and that their testimony in support of the issues on their behalf joined was closed, the counsel for all the defendants in both cases, except the Virginia Midland Railway Company, moved and requested the court, on said testimony as set forth in the foregoing exceptions, as aforesaid, to instruct the jury to return a verdict for the defendant, The Alexandria and Washington Railroad Company, which motion and request was by the court thereupon overruled and denied.

To which ruling of the court the said counsel for the said defendants then and there excepted.

Whereupon the said counsel for the said defendants moved and requested the court to instruct the jury to return a verdict in favor of the defendant, The Alexandria and Fredericksburg Railway Company, which motion and request was by the court overruled and denied.

To which ruling of the court the said counsel for the said defendants then and there excepted.

Whereupon the said counsel for the said defendants moved and requested the court to instruct the jury to return a verdict in favor of the defendant, The Pennsylvania Railroad Company, which motion and request was by the court overruled and denied.

To which said rulings of the court the said counsel for the
170 said defendants then and there excepted, and to which several rulings so denying said several three motions and refusals to grant said instructions, the said counsel for the said defendants having at the several times thereof severally excepted, and the exceptions were at the several times thereof duly noted on the minutes of the court, and the counsel for the said defendants pray the court to sign and seal this, their fifteenth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it further remembered that after the plaintiffs had concluded their testimony-in-chief, which is set forth in the foregoing bills of exceptions, which are made a part hereof, the defendants, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad

Company, The Alexandria and Washington Railroad Company, The Alexandria and Fredericksburg Railway Company, to support the issues on their part joined, gave in evidence to the jury the laws of the State of Virginia chartering the Alexandria and Washington Railroad Company and the Alexandria and Fredericksburg Railway Company, copies of which are as follows, to wit:

Charter of the Alex. & Washington R. R. Co.

An act to incorporate a company to construct, on the plan of James S. French, a railroad between Alexandria and Washington city. Passed February 27, 1854.

1. Be it enacted by the General Assembly, That it shall be lawful to open books of subscription at the city of Alexandria, under the direction of James S. French, John W. Maury, A. J. Marshall, Cornelius Boyle, George French, Edgar Snowden, and R. W. Latham, or any two of them, and at such other places under the direction of such agents as a majority of the above-named commissioners
171 may appoint for the purpose of receiving subscriptions to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint-capital stock for constructing and operating a railroad, on the plan of James S. French, as set forth in the report of the committee of the house of delegates, document No. 65, session 1850–'51, from the city of Alexandria, in the State of Virginia, to the city of Washington, in the District of Columbia, crossing the Potomac at some eligible point between the two cities.

2. Whenever two thousand shares shall have been subscribed, the subscribers, their executors and assigns shall be and are hereby declared and constituted a body politic and corporate, under the name and style of "The Alexandria and Washington Railroad Company," and shall be subject to all the provisions of the code of Virginia, applicable thereto.

3. Provided, that it shall not be lawful for said company to connect with any other railroad terminating within the corporate limits of the city of Alexandria, without the consent of the city councils thereof; and further, that the said company shall not permit the said road to pass into the exclusive possession of any corporation without the limits of the Commonwealth of Virginia; and provided further, that the said road shall be finished within five years from the commencement of the work.

4. This act shall be in force from its passage, and the term of two years shall be allowed to commence the road.

Charter of the Alexandria & Fredericksburg Railway Company.

An act to incorporate a company to construct a railway from the city of Alexandria, to connect with the Aquia Creek and Richmond railway. Passed February 3, 1864.

Section 1. Be it enacted by the General Assembly, That
172 it shall be lawful to open books of subscription at the city of

Alexandria, under the direction of Reuben Johnson, Lewis McKenzie, John G. Underwood, Silas Seymour, Joseph B. Stewart, Henry S. McCombe and Alexander Hay, or a majority of them, for the purpose of receiving subscriptions to an amount not exceeding two million dollars of capital stock, in shares of one hundred dollars each, for the purpose of surveying, locating, constructing and operating a railroad from the terminus of the Washington, Alexandria & Georgetown railroad, in the city of Alexandria, to the most eligible point on the present railroad, from Aquia creek to the city of Fredericksburg.

SECTION 2. That whenever two thousand shares of said stock shall have been subscribed, and ten per cent. thereon paid in good faith, the subscribers, their successors, executors and assignees, shall be and are hereby declared and constituted a body politic and corporate, under the name and style of the "Alexandria & Fredericksburg Railway Company," and shall be subject to all the provisions of the code of Virginia, applicable to such corporations: Provided, that the rates of charge for the transportation of persons and property upon the said railroad, to or from the city of Alexandria, shall not be ratably other or higher than upon persons or property destined to any point north of said city.

SECTION 3. That it shall be lawful for said company, for the purpose of constructing, equipping and operating said railway, to sell their bonds, with coupons attached, at a rate of interest not exceeding seven per cent. per annum, to be paid semi-annually to the amount of one million dollars; and also to borrow money upon their promissory notes, duly executed under the authority of its board of directors, to an amount not exceeding five hundred thousand dollars.

SECTION 4. That said company shall commence the construction of said railway within two years, and complete the same within five years from the passage of this act.

SECTION 5. This act shall be in force from its passage.

173 *Amendment to the Charter of the Alexandria & Fredericksburg Railway Company.*

An act to amend the charter of the Alexandria and Fredericksburg Railway Co. Approved June 4, 1870.

1. Be it enacted by the General Assembly of Virginia, That the forfeiture of the charter of the Alexandria and Fredericksburg Railway Company, incurred by reason of the failure of said company to complete said railway within the time specified in section four of its act of incorporation, passed February 3, 1864, be and is hereby waived, and that extension of time for building said railway be granted as follows: That the work on said railway shall be resumed within one year, and the same shall be completed within three years from the passage of this act, and that the said company be and is hereby authorized to extend said railway to a point on the Potomac river, between Alexandria and Washington city, or opposite Wash-

ington city, and to bridge said river so far as the State of Virginia can authorize the same, or to connect with the bridge of any railroad company that may have been or may hereafter be chartered by the Congress of the United States, whose road passes or shall pass through the District of Columbia; Provided, that in the extension of said railway it shall in no way interfere with the chartered rights or franchises of any railroad extending between Alexandria and Washington; but this proviso shall not be construed as preventing said Alexandria and Fredericksburg railway from crossing any such railroad.

2. Be it further enacted, That the said Alexandria and Fredericksburg Railway Company be authorized, at their option, to make the connection of their railway with that of the Richmond, Fredericksburg and Potomac Railway Company at the most eligible point on the present railroad from Aquia creek to the city of Fredericksburg, or on any lawfully authorized branch thereof north of said city;
174 Provided, that the said railway shall be constructed from its junction with the Richmond, Fredericksburg, and Potomac railroad to Alexandria, before its construction shall be commenced north of Alexandria.

3. Be it further enacted, That the second section of the said act of incorporation, passed February 3, 1864, shall be so amended as to read as follows:

"SECTION 2. That whenever two thousand shares of said stock shall have been subscribed, and ten per cent. thereon paid in good faith, the subscribers, their successors, executors, and assigns shall be declared and constituted a body politic and corporate, under the name and style of the Alexandria and Fredericksburg Railway Company, and shall be subject to all the provisions of the code and general laws of Virginia applicable to such corporations: Provided, that the rates of charge for the transportation of passengers and freight upon the said railway, to or from the city of Alexandria, shall not be ratably higher or other than upon passengers or freight passing over said railway and destined to or coming from the cities of Washington, D. C., and Baltimore, Maryland."

4. This act shall be in force from its passage.

And they also gave in evidence to the jury a certified copy of the record of the county court of Alexandria county, Virginia and of the corporation court of the city of Alexandria, Virginia, which record is in the words and figures following, to wit:

Authentication of Record.

Clerk's certificate.

CLERK'S OFFICE, COUNTY COURT OF THE
COUNTY OF ALEXANDRIA, VA.

I, Howard H. Young, clerk of the said court, do hereby certify that the writings herein designated as a part of the pamphlet an-

nexed to this certificate, are true copies of the originals of
175 record in said office, and that the copies printed on page 11, [p. 135*] from the 11th to last line both inclusive [from the 1st to last line inclusive], and on page 12, [p. 136] the first 28 lines [first 13 lines]; on page 13, [p. 137] from the 10th to the last line both inclusive [from 11th to last line inclusive,] and all on page 14 [p. 138 and first 9 lines on p. 139.] On page 15, [p. 139] the 11th, 12th, 13th, 14th, and 15th lines [lines 21 to 26 inclusive], and all on page 17 [from line 12 on p. 141 to line 17 on p. 142 inclusive]; on page 19, [p. 143] the first 14 lines [lines 17 to 30 inclusive] and last 6 lines, [p. 144, lines 10 to 16 inclusive] and first 16 lines on page 20 [p. 144, lines 17 to 34 inclusive]; on page 24, [p. 149] the last 18 lines [first 21 lines], and all on page 25, except the last 4 lines [p. 149, from line 22 to line 15 on p. 150 both inclusive]; on page 26, [p. 150] the first 6 lines [lines 20 to 25 inclusive], and all on page 30, [p. 154, last 14 lines, and first 32 lines on p. 155]; on page 31, [p. 155] the first 6 [last 8 lines] and last 6 [lines 23 to 28 on p. 156] lines; and on page 32, [p. 157] the 5th, 6th, 7th, 8th and 9th lines [first 9 lines] of the annexed pamphlet are of record in this office.

Witness my hand and the seal of said court this 23rd day of March, 1889.

[SEAL.] H. H. YOUNG, *Clerk.*

Judge's Certificate.

I, D. M. Chichester, judge of said court, do certify the foregoing attestation by Howard H. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 23rd day of March, 1889.

D. M. CHICHESTER, *Judge.* [SEAL.]

Clerk's Certificate to Judge's Official Character.

I, Howard H. Young, clerk of said court, hereby certify that D. M. Chichester, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, judge of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 25th day of March, 1889.

[SEAL.] H. H. YOUNG, *Clerk.*

176 Alexandria and Fredericksburg Railway Co.

Deed of Trust.

This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and sixty-six, between the Alexandria and Fredericksburg Railway Company, a body corporate, chartered and organized by authority of the legislature of Virginia,

* The figures in brackets refer to this volume.

party of the first part, and D. Randolph Martin and Robert Turner, of the city of New York, parties of the second part, witnesseth, that whereas, the legislature of the State of Virginia did, on the third day of February, anno Domini one thousand eight hundred and sixty-four, authorized the said party of the first part to survey, locate, construct and operate their railway from the terminus of the Washington, Alexandria and Georgetown railroad in the city of Alexandria, to the most eligible point on the present railroad from Aquia creek to the city of Fredericksburg, which said survey and locating has now been completed as authorized by the charter of said party of the first part as aforesaid, and the said party of the first part has put the whole of their said road under contract for construction, and work has now commenced on the same;

And whereas, by the third section of the charter of the said party of the first — it is provided: "That it shall be lawful for said company, for the purpose of constructing, equipping and operating said railway, to sell their bonds with coupons attached at a rate of interest not exceeding seven per cent. per annum, to be paid semi-annually, to the amount of one million of dollars." And the said party of the first part, being so authorized and empowered, have resolved to issue and sell or pledge their said bonds to the amount of one million of dollars, to be composed of one thousand bonds of the par value of one thousand dollars each, and to be numbered from one to one thousand inclusive, the principal of said bond- payable in gold in thirty years from the first day of June, 1866, and
177 the interest payable semi-annually at the rate of seven per cent. per annum in gold, at the Ocean National bank, on the first days of June and December of each year, until the principal of said bonds be discharged according to the tenor and stipulation thereof, which said bonds are as follows:

No. —. $1,000.

UNITED STATES OF AMERICA.

The Alexandria and Fredericksburg Railway Co.

First-mortgage Seven Per Cent. Gold Bond.

The Alexandria and Fredericksburg Railway Company are indebted to the bearer in the sum of one thousand dollars, which sum the said company promise to pay unto the holder hereof at the Ocean National bank, in the city of New York, thirty years after date thereof, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually from the date hereof in gold, lawful money of the United States, on presentation of the annexed interest coupons at the Ocean National bank, in the city of New York, until the principal sum be paid.

In testimony whereof the said company has hereunto caused to be affixed its corporate seal, and these presents to be executed by its president and treasurer, at the city of Alexandria, State of Virginia, this first day of June, A. D. one thousand eight hundred and sixty-six.

This bond is secured by a deed of trust, executed to D. Randolph Martin and Robert Turner, of New York, and no bond is valid unless countersigned by them.

(Sign'd) D. C. McCALLUM, *President.*
(Sig'd) ROBERT TURNER, *Treasurer.*

178 We, the undersigned trustees, do hereby certify that the above bond is issued by virtue of authority granted to the Alexandria and Fredericksburg Railway Company, by an act of the legislature of the State of Virginia, passed February 3d, 1864, and is one of a series of one thousand bonds of similar tenor and date, and of like amount with the other bonds issued and to be issued under the said act; that the said company has executed to us a deed of trust dated the first day of June, 1866, conveying to us the entire railway of said company, with its equipment and appurtenances, for the benefit of the holders of said bonds, and to secure the payment thereof; that the said deed of trust has been recorded in every county, through or in which the said railway has been permanently located, and a certified copy thereof filed in the county clerk's office of the said several counties, and that the same is a first lien upon the said company's road, and that no more such bonds have been certified by us than are authorized by the said act of the State of Virginia.

(Signed) D. RANDOLPH MARTIN,
ROBERT TURNER, *Trustees.*

And whereas, for the purpose of securing the punctual payment of the semi-annual interest on said bonds on or before the first day of June and December of each year as aforesaid, and for the purpose of securing the payment of the principal of said bonds at their maturity, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-six, being thirty years from the date of said bonds as aforesaid, the said party of the first part have resolved, and hereby do execute, sign, seal and deliver to the said parties of the second part, and to their survivor or survivors, successor or successors, as hereinafter provided, the following conveyance and deed of trust, that is to say:

Now, therefore, in consideration of the premises and the
179 sum of five dollars in hand paid to the party of the first part by the parties of the second part, at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, and for the further purposes, trusts, benefits and considerations hereinafter named, the said parties of the first part have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said parties of the second part, their survivor or survivors, successor or successors, in this trust, all the railroad of the said party of the first part; that is to say, the said Alexandria and Fredericksburg railway, commencing at the terminus of the Washington, Alexandria and Georgetown railroad, in the city of Alexandria, State of Virginia, to the city of Freder-

icksburg, in said State, or to such point of junction with the Richmond, Fredericksburg and Potomac railroad, or the road leading from Aquia creek to the city of Fredericksburg, at or near Brooks' station, as now located, or to any other point of junction with the said Richmond, Fredericksburg and Potomac railroad which may in future be adopted, including all and singular the franchises of said railroad as now granted and chartered, and any and all amendments, additions or modifications thereof, together with all and singular the rights, interests, property and estate, real, personal or mixed, acquired, or which may be acquired, constructed or to be constructed, of every species nature and kind whatsoever. To have and to hold to them, the said parties of the second part, their survivor or survivors, successor or successors, forever. In trust nevertheless, for the use and purposes following, and no other; that is to say, to permit the said Alexandria and Fredericksburg Railway Company to occupy their said railroad, with all and singular its franchises and appurtenances as set forth in the premises, and the same to control, manage and direct as a body corporate, and to receive and enjoy the income thereof. But in the event the said party of the first —, the said Alexandria and
180 Fredericksburg Railway Company, shall fail to pay the semi-annual interest on said bonds in gold as the same shall mature due on the first day of June and first day of December, of each year, so that there shall at any time any one instalment of interest remain unpaid for the period of ninety days from the maturity thereof, after the first day of June or December, as the case may be, or, if when the principal of said bonds numbered and registered as aforesaid shall mature and become due and the same shall remain unpaid for the period of ninety days, then in that or in either event the said parties of the second part, trustees as aforesaid, their successors, survivor or survivors in this trust, shall at the request in writing of the holder or holders of said bonds, or any part thereof, have the right and power, after giving thirty days' notice of such default of the party of the first part in the payment of said interest as aforesaid, or in the payment of the principal sum when the same shall have matured, as aforesaid, to enter and take possession of said Alexandria and Fredericksburg railway, together with all and singular the franchises, property, estate, equipments, buildings, shops, engines and cars, and every species of property, right, title or interest belonging thereto, in whatever shape the same may exist, and also, to take possession of all records, stock books, account books receipt books or vouchers for any money due the said company upon any instrument in writing, or from any source whatever, or that may be requisite to give proper information as to the affairs and real condition of said company, and the said trustees, or their successors, are hereby invested with power to enforce the delivery of the said books, vouchers and credits, or any part thereof. And said trustees, or their successors, may also at their option appoint a receiver, auditor, agent or agents to conduct the affairs of said road, or to work the same for the benefit of the holders of said bonds or coupons so overdue, or their assigns. And said

trustees or their successors shall further have the power, in the event of such default in payment of interest as
181 aforesaid, or in the payment of said principal sum as aforesaid, at their option or at the request in writing as aforesaid of the holders of said bonds, or any part thereof, so to do, shall cause the whole of said Alexandria and Fredericksburg railway, together with all and singular its franchises, rights, privileges, property and equipments aforesaid acquired, or which may be acquired, constructed or which may be constructed, now existing or hereafter created by purchase or otherwise, to be sold at public sale, after giving sixty days' notice in any one or more newspapers published in Alexandria, Virginia, Washington, District of Columbia, Baltimore, Maryland, Philadelphia, Pennsylvania, and New York city, stating the time and place of sale, and such sale may be for cash or upon such other terms of sale as said trustees or their successors shall deem best for the benefit of the holder or holders of said bonds, but if any other terms than a cash sale be made, the same shall be stated distinctly in the advertisment of sale aforesaid; and the said trustees shall have power to postpone or adjourn said sale from time to time as may be deemed most to the interest of said bondholders; and upon such sale being made, the said trustees or their successors in this trust shall make, execute and deliver to the purchaser or purchasers a good and sufficient title and conveyance of the whole of said Alexandria and Fredericksburg railway, as provided in the code of Virginia; and shall also transfer and deliver all and singular the records, stock books and all other vouchers or records as may be material to a proper understanding of the affairs of said road. The proceeds of said railway, when sold, shall be applied as follows: First, to discharge the costs of said sale, and pay the said trustees a commission of three per cent. for conducting and making the same. Second, to pay and discharge in full all the coupons that are unpaid at the time of sale, or that may become due if a time sale be made. Third, to pay in full the principal sum due of
182 each and every bond. Fourth, the overplus to be paid over to the said Alexandria and Fredericksburg Railway Company, or any person properly authorized to receive the same, for distribution to other creditors or for the stockholders thereof. It being the special object of this indenture of trust to effectively secure the principal and interest of said coupon bonds as hereinbefore described, and to that end it is specially stipulated and covenanted, that default in the payment of any instalment of the semi-annual interest for the period of ninety days shall cause to mature and become due the whole of the principal sum of each and every bond, and both principal and interest shall be paid as hereinbefore provided.

It is also mutually stipulated, agreed and covenanted, that in the event of the death, resignation or incapacity of said parties of the second part as trustees, or either of them, or of his or their successor, or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any

bondholder giving ten days' notice in writing, or otherwise, to said railway company, and to the other bondholders so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship by giving notice to said bond holder or holders; and the trustee or trustees so appointed shall have all the rights and powers, and perform all the duties which by operation of this trust devolved on the parties of the second part herein named.

And if from any cause, omission or informality this indenture shall prove defective or insufficient for securing the objects and trusts herein provided, the said parties of the first part, their successors or assigns, shall make and execute such additional writing, covenant or assurance as shall obviate and cure any and all said defects, errors or omissions.

183 In testimony whereof, the said Alexandria and Fredericksburg Railway Company have and hereby do cause this indenture to be executed, and its corporate seal hereunto affixed, and the same to be signed by its president and attested by its secretary, and by them jointly acknowledged, and also to be signed by the parties of the second part as evidence of the acceptance of this trust, this the first day of June, one thousand eight hundred and sixty-six.

D. C. McCALLUM,
Pres't A. & F. R. Company.

[SEAL.]

Attest: R. JOHNSTON,
Sec'y A. & F. R. Co.

ROBERT TURNER, *Trustee.*
D. R. MARTIN.

The bonds secured by this deed to be duly stamped as the same shall be executed and delivered.

R. JOHNSTON,
Sec'y A. & F. R. Co.

COUNTY OF ALEXANDRIA, *To wit:*

I, G. W. Jamieson, a notary public for the county aforesaid, in the State of Virginia, do certify that Donald C. McCallum, president, and Reuben Johnston, secretary, of the Alexandria and Fredericksburg Railway Company, whose names are signed to the writing hereto annexed, bearing date on the first day of June, 1866, have acknowledged the same before me, in my county aforesaid.

Given under my hand this ninth day of August, 1866.

G. W. JAMIESON,
Notary Public.

184 At a meeting of the board of directors of the Alexandria and Fredericksburg Railway Company, held at their office, in the city of Alexandria, Va., on the ninth day of August, 1866, the president laid before the board the annexed draft of a deed of trust from this company to D. Randolph Martin and Robert Tur-

ner, of the city of New York, conveying all the road, real and personal property, rights and franchises of the company to secure the payment of the bonds of the company to the amount of one million dollars, bearing interest at the rate of seven per cent. per annum, payable in gold half yearly on the first day of June and December in each and every year, the principal of said bonds payable thirty years after their date (which bonds are more particularly described in said draft), which being read and considered, it was thereupon—

Resolved, That the said draft of a deed of trust be signed, acknowledged and delivered by the president and secretary of this company as and for the act and deed of this company; that the secretary do affix thereto the company's seal; and that the same do bear date the first day of June, 1866.

True copy from the minutes. As witness my hand and the seal of the said company this ninth day of August, 1866.

R. JOHNSTON,
[SEAL.] *Sec'y A. & F. R. Co.*

STATE OF NEW YORK, }
City and County of New York, } ss:

I, William S. Hascall, a notary for the city and county aforesaid, in the State of New York, do hereby certify that on the thirty-first day of August, 1866, personally appeared before me Robert Turner, and on the twelfth day of September, 1866, personally appeared before me D. Randolph Martin, whose names are signed to the within writing, bearing date June 1st, 1866, and severally acknowledged to me that they executed the said writing for the purposes therein expressed; this done in the city and county aforesaid.

185 Given under my hand and official seal, this twelfth day of September, A. D. 1866.

WM. S. HASCALL,
[SEAL.] *Notary Public.*

STATE OF NEW YORK, }
City and County of New York, } ss:

I, William C. Connor, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that William S. Hascall, whose name is inscribed to the certificate of the proof or acknowledgment of the annexed instrument, and therein written, was at the time of taking such proof or acknowledgment a notary public in and for the city and county of New York, dwelling in said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed

the seal of the said court and county, the twelfth day of September, 1866.

[Rev. stamp, 5 cts.]

[SEAL.] WM. C. CONNOR, *Clerk.*

STATE OF VIRGINIA:

Alexandria county court, clerk's office.

SEPTEMBER 13TH, 1866.

This deed was received in the office, and having been acknowledged before notaries public, admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

186 1866, September 13th.—Recorded in Liber X, No. 3, page 378, and examined.

Teste: J. TACEY, *Clerk.*

Clerk's office, Fairfax county court.

SEPTEMBER 14TH, 1866.

This deed was received in the office, and having been acknowledged before notaries public, admitted to record.

Teste: F. D. RICHARDSON, *Clerk.*

1866, September 14.—Recorded in Liber G, No. 4, folios 183, &c., and examined.

F. D. R.

In the clerk's office of Prince William county court.

SEPTEMBER 17TH, 1866.

This indenture was received in the office, and having been acknowledged before notaries public, admitted to record.

A copy.

Teste: M. B. SINCLAIR, *Clerk.*

1866, Sept. 17th.—Recorded in Liber No. 26, page 263, and examined.

Teste: M. B. SINCLAIR, *Clerk.*

Clerk's office, Stafford county court.

SEPTEMBER 18TH, 1866.

This indenture was received in the office, and having been acknowledged before notaries public, admitted to record.

A copy.

Teste: JAMES E. TOWSON, *C. S. C.*

September 18th, 1866.—Recorded in Liber 26, folio 154. Examined.

JAMES E. TOWSON, *C. S. C.*

187 VIRGINIA:

Corporation Court of the City of Alexandria.

DECEMBER 13, 1870.

In the matter of the application of the Alexandria and Fredericksburg Railway Company for the appointment of Herbert J. Lombaert as trustee in their deed of trust in lieu of D. Randolph Martin and Robert Turner, trustees therein named, who have resigned.

It appearing to the court, by the petition of the Alexandria and Fredericksburg Railway Company and the resignation of D. Randolph Martin and Robert Turner, trustees, this day filed, that D. Randolph Martin and Robert Turner, trustees in a deed of trust executed by the Alexandria and Fredericksburg Railway Company to said trustees, dated the first day of June, A. D. 1866, and which is duly of record in the clerk's office of the county court of Alexandria county, Virginia, decline to execute the trusts of said deed, and have in writing resigned their said trusteeship; and it further appearing to the court that it is, among other things, provided in said deed of trust as follows, to wit:

"It is mutually stipulated, agreed and covenanted that in the event of the death, resignation or incapacity of said parties of the second part as trustees, or either of them, or of his or their successor or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any bondholder, giving ten days' notice, in writing or otherwise, to said railway company and to the other bondholders, so far as known to such party, and the said railway company may likewise apply for the fulfilling of said trusteeship by giving notice to said bond holder or holders, and the said trustee or trustees so appointed shall have all the rights & powers and perform all the duties which, by operation of this trust, devolved on the parties of the second part herein named."

188 And it further appearing to the court that George B. Roberts is the holder of one hundred and nine of the bonds of the said Alexandria and Fredericksburg Railway Company, secured by said deed of trust, and that he has received ten days' notice in writing of this application, the court doth therefore order and direct that Herman J. Lombaert be and he is hereby substituted and appointed trustee in the place and stead of the said D. Randolph Martin and Robert Turner, and the said Herman J. Lombaert is substituted to all the rights, powers, duties and responsibilities of the said D. Randolph Martin and Robert Turner under the aforesaid deed of trust.

VIRGINIA:

Corporation Court of the City of Alexandria.

CLERK'S OFFICE, *December 13th*, 1870.

I hereby certify that the above is a true copy from the records. In testimony whereof I hereto sign my name and affix the seal of said court.

[SEAL.] MORTON MARYE, *Clerk.*

To the Alexandria and Fredericksburg Railway Company:

I hereby resign as one of the trustee- in the indenture of mortgage of your company, dated June first, A. D. 1866.

New York, November 11th, 1870.

D. R. MARTIN.

Witness:

W. J. HOWARD.

189 To the Alexandria and Fredericksburg Railway Company:

I hereby resign as one of the trustees in the indenture of mortgage of your company, dated June first, A. D. 1866.

New York, December 7, 1870.

ROBERT TURNER.

Witness:

B. E. SMITH.

A true copy.

Teste: MORTON MARYE, *Clerk.*

The petition of the Alexandria and Fredericksburg Railway Company respectfully represents:

That in pursuance of the power in them vested by law, they did, on the first day of June, A. D. 1866, make, execute and deliver to D. Randolph Martin and Robert Turner, of the city of New York, a mortgage or deed of trust of their corporate property and franchise, to secure one thousand of their bonds for one thousand dollars each, as therein fully recited and set forth, and which mortgage or deed of trust has been duly recorded.

That the said D. Randolph Martin and Robert Turner have resigned from said trust—the former on the eleventh day of November, 1870, and the latter on the seventh day of December, A. D. 1870—whereby the same is now vacant.

That for the purpose of meeting and providing for such contingency, it is recited in the said mortgage or deed of trust as follows:

"It is also mutually stipulated, agreed and covenanted, that in the event of the death, resignation or incapacity of said parties of the second part as trustees, or either of them, or of his or their successor or survivor in the trust, the said trusteeship shall be deemed vacant and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application
190 of any bondholder giving ten days' notice in writing or otherwise, to said railway company, and to the other bond-

holders, so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship, by giving notice to said bond holder or holders. And the trustee or trustees so appointed shall have all the rights and powers, and perform all the duties which, by operation of this trust, devolved on the parties of the second part herein named."

That ten days' written notice has been given by your petitioner of their intention to make this application to your honorable court, to fill the said vacancy, to the holder of one hundred and nine of said one hundred and ten bonds, the holder of the remaining one bond being unknown.

Your petitioner, therefore, respectfully prays your honorable court to fill the vacancy in the trusteeship in said mortgage or deed of trust, by the appointment thereto of one suitable person as trustee.

And they will ever pray, &c.

G. B. ROBERTS, *President.* [L. S.]

Attest: ALBERT HEWSON, *Secretary.*

STATE OF VIRGINIA, }
Alexandria City. }

Personally appeared before the undersigned, a notary public for the city aforesaid, in the State of Virginia, G. B. Roberts, who, being duly affirmed, says that the matters and facts set forth in the petition hereto annexed are true.

Given under my hand this thirteenth day of December, 1870.

FRANCIS L. SMITH, JR.,
Notary Public.

191 I, as owner of $109,000 of the bonds within referred to, hereby acknowledge that I have received ten days' notice in writing of this application.

(109 bonds.)

G. B. ROBERTS.

December 13th, 1870.

Witness:
FRANCIS L. SMITH, JR.

A true copy.
Test: MORTON MARYE, *Clerk.*

VIRGINIA:

Corporation Court of the City of Alexandria.

CLERK'S OFFICE, *July 24th*, 1884.

The foregoing record of application and appointment was this day received and recorded.

Teste: JOHN S. BEACH, *Clerk.*

1884, July 24th, admitted and recorded in Deed Book No. 14, page 339.

Teste: JOHN S. BEACH, *Clerk.*

In the Clerk's Office of Alexandria County Court.

JULY 26TH, 1884.

Received and recorded in Liber F, No. 4, page 460.
Teste: BENJ. AUSTIN, *Clerk.*

In the Clerk's Office of Fairfax County Court, August Court, 1871.

The foregoing papers in the case of the Alexandria and Fredericksburg Railway Company, substituting a trustee under deed
192 of trust, in place of D. R. Martin and A. Turner, with proceedings from the corporation court of Alex., was received in the clerk's office, eighteenth day of July, 1871, and admitted to record.
Teste: F. D. RICHARDSON, *C.*

In testimony whereof I have hereto subscribed my name and affixed the seal of the said court, this 22d December, 1872.
[SEAL.] F. D. RICHARDSON,
Clerk of the County Court of Fairfax County.

Recorded Liber N, No. 4, folio 249.

In the Clerk's Office of Prince William County Court.

DECEMBER 24TH, 1870.

This copy of record of application of the Alexandria and Fredericksburg Railway Company for the appointment of new trustees was received and admitted to record.
Teste: L. C. OSMAN, *Clerk.*

Copies.
Teste: LUCIEN A. DAVIS, *Clerk.*

STATE OF VIRGINIA, }
County of Prince William, } *To wit:*

I, Lucien A. Davis, clerk of the county court of Prince William county, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record of the said court.
Given under my hand and seal of the said court, this twenty-third day of December, A. D. 1872.
[SEAL.] LUCIEN A. DAVIS, *Clerk.*

193 In Stafford County Court, Clerk's Office,

JANUARY 7TH, 1871.

A transcript from the records of the corporation court of Alexandria, in relation to the substitution of trustees under a deed of trust or mortgage of the Alexandria and Fredericksburg Railway Company, was this day received in the clerk's office and admitted to record.
Teste: C. A. BRYAN, *D. C.*

Recorded Liber T. T., page 128.

In the County Court of Alexandria County, Virginia.

OCTOBER THE 7TH, 1872.

In the Matter of the Application of THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY for the appointment of a trustee under their trust deed of June 1st, 1866.

This motion was this day docketed, and it appearing to the court by the petition of the Alexandria and Fredericksburg Railway Company, and the evidence in the support thereof, that there is a vacancy in the trusteeship in a deed of trust executed by said company, dated the first day of June, A. D. 1866, and which is duly of record in the clerk's office of the county court of the county of Alexandria, Va., and it further appearing to the court that the owners of seven hundred and eighty-seven thousand dollars of the bonds (first lien) of the Alexandria and Fredericksburg Railway Company, secured by said deed of trust, have been duly notified in writing of said application, and whereas it appears proper to the court that a trustee should be substituted in the place of the trustees appointed in and under said deed, the court doth now, therefore, under authority of the statute in such case made and provided, order
194 and direct that Washington Butcher be and he is hereby appointed trustee in the place and stead of the said D. Randolph Martin, Robert Turner, and Herman J. Lombaert, and that he, the said Washington Butcher, be and is hereby substituted to all the rights, powers, duties, and responsibilities vested in or conferred on said parties by and under said deed of trust dated the first day of June, A. D. 1866.

A copy.
Teste:
[SEAL.] DAVID M. HUNTER, *Clerk.*

In the Clerk's Office of Alexandria County Court.

JULY 26TH, 1884.

The above certified order was this day received and recorded in Liber F., No. 4, page 463.
Teste: BENJ. AUSTIN, *Clerk.*

VIRGINIA:

Corporation Court of the City of Alexandria, Clerk's Office.

JULY 24TH, 1884.

The above-certified order of the court of Alexandria county, Va., was this day received and recorded.
Teste: JOHN S. BEACH, *Clerk.*

1884, JULY 24TH.

Admitted and recorded in Deed Book No. 14, page 343.
Teste: JOHN S. BEACH, *Clerk.*

In the County Court of Fairfax County, October Court, 1872.

A copy of an order of the county court of Alexandria
195 county, appointing Washington Butcher trustee in the place and stead of Randolph Martin, Robert Turner, and Herman J. Lombaert, the former trustees in a deed of trust from the Alexandria Railway Company to the said former trustees by deed dated 1st June, 1866, was received, and on motion of the said company it is ordered that said copy be recorded.

Teste: F. D. RICHARDSON, *C.*

Recorded Liber O., No. 4, folio 468.

In Prince William County Court.

NOVEM. 6TH, 1872.

The copy of an order of the county court of Alexandria county entered on the 7th day of October, 1872, appointing Washington Butcher trustee in the place and stead of D. Randolph Martin, Robert Turner, and Herman J. Lombaert, trustees in a deed of trust executed by the Alexandria and Fredericksburg Railway Company on the first day of June, 1866, was presented to the court and ordered to be recorded in the deed book of this court.

Teste: LUCIEN A. DAVIS, *Clerk.*

Recorded in Deed Book No. 29, folio 70.

In Stafford County Court.

NOVEMBER 20TH, 1872.

The foregoing order of the Alexandria county court, substituting Washington Butcher as trustee in a deed executed by the Alexandria and Fredericksburg Railway Company, dated the first day of June, A. D. 1866, in the place and stead of D. Randolph Martin, Robert Turner, and Herman J. Lombaert, is this day recorded in the minutes of this court, page 454.

Teste: JOHN O. TACKETT,
Cl'k Stafford Co. Court.

196 STATE OF VIRGINIA:

At a court of monthly sessions held for the county of Alexandria, at the court-house of said county, on Monday, the third day of March, 1873.

On the petition of the Alexandria and Fredericksburg Railway Company for the substitution of a trustee in the place of Washington Butcher, deceased.

The petition of the Alexandria and Fredericksburg Railway Company having been this day filed, setting forth that Washington Butcher, who by an order of this court entered at the October term, 1872, was appointed and substituted trustee under a deed of trust executed by the said railway company, dated the first day of June, 1866, which is duly of record in the clerk's office of this court, has departed this life, and asking that one or more suitable person or

persons may by an order of this court be appointed and substituted in the place and stead of the said Washington Butcher, deceased, and it appearing to the court that due notice of this application has been given according to the statute in such case made and provided—

It is now ordered that Strickland Kneeass and Josiah Bacon be and they are hereby appointed trustees in the place and stead of Washington Butcher, deceased, and of the trustee named in said deed, and that the said Strickland Kneeass and Josiah Bacon, or the survivor of them, as such trustees or trustee, be and they are hereby substituted to all the rights, powers, duties and responsibilities of the said Washington Butcher, deceased, and of the trustee named in the said deed of trust of June 1st, 1866, which were derived from said deed of trust of June 1st, 1866.

STATE OF VIRGINIA, *Alexandria County,* } *To wit:*

I, David M. Hunter, clerk of the county court of Alexandria county, in the State of Virginia, do hereby certify that the 197 above and foregoing is truly copied from the minutes of the proceedings of the county court of Alexandria county, in the State of Virginia.

In testimony whereof, I have hereunto set my hand and affixed the public seal of said court at the court-house of said county, in the city of Alexandria, this sixth day of March, A. D. 1873.

[SEAL.] DAVID M. HUNTER,
Clerk Alexandria County Court, Virginia.

In the clerk's office of Alexandria county court.

JULY 26TH, 1884.

This order received and recorded in Liber F, No. 4, page 464.

Teste: BENJ. AUSTIN, *Clerk.*

VIRGINIA:

Corporation court of the city of Alexandria.

CLERK'S OFFICE, *July 24th,* 1884.

This petition and order was this day received and recorded.

Teste: JOHN S. BEACH, *Clerk.*

1884, July 24.—Admitted and recorded in Deed Book No. 14, page 345.

Teste: JOHN S. BEACH, *Clerk.*

In the clerk's office of the county court of Fairfax county.

MARCH 7TH, 1873.

This order from the county court of Alexandria county was received and admitted to record.

Teste: F. D. RICHARDSON.

198 Recorded in Liber P. No. 4, page 254, and examined.
Teste: F. D. RICHARDSON, *Clerk.*

In the Clerk's Office, County Court of Prince William County.

AUGUST 13TH, 1874.

This order for substitution of a trustee for the Alexandria and Fredericksburg Railway Company, with the certificate of the clerk of county court of Alexandria county, was received and admitted to record.

Teste: L. A. DAVIS,
Clerk of County Court of Prince William County, Va.

Liber 35, page 72.

VIRGINIA, } *To wit:*
Stafford County, }

I, John O. Tackett, clerk of the county court of Stafford county, do hereby certify that the above is a true and correct copy of an order entered on the minute book of Stafford county court on March 19th, 1873.

JOHN O. TACKETT, *Clk.*

VIRGINIA:

In the Matter of the Application of THE PENNSYLVANIA RAILROAD COMPANY for appointment of a trustee in a deed.

Proceedings before the corporation court of the city of Alexandria, at the court-house of said city, on the seventh day of June, 1881.

This day came the Pennsylvania Railroad Company by its attorney, and filed its petition in these words, to wit:

199 To the Hon. A. W. Chilton, judge of the corporation court of the city of Alexandria, Va.:

The petition of the Pennsylvania Railroad Company would respectfully represent unto your honor that it is the owner of all the bonds of the Alexandria and Fredericksburg Railway Company, secured by its deed of trust or mortgage dated the first day of June, 1866. That Josiah Bacon, one of the substituted trustees under said deed of trust or mortgage, departed this life on the 3rd day of February, 1881. That for the purpose of meeting and providing for such contingency it is provided in the said mortgage or deed of trust as follows:

"It is also mutually stipulated, agreed and covenanted, that in the event of the death, resignation, or incapacity of said parties of the second part, as trustees, or either of them, or of his or their successor or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any bondholder giving ten days' notice in writing or other-

wise to said railway company and to the other bondholders, so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship, by giving notice to said bondholder or holders. And the trustee or trustees so appointed shall have all rights and powers, and perform all the duties which, by operation of this trust, devolved on the parties of the second part herein named."

That ten days' written notice has been given by your petitioner of its intention to make this application to your honorable court to fill the said vacancy to the said The Alexandria and Fredericksburg Railway Company, and to the holder of all the bonds of said company secured by the said mortgage.

Your petitioner therefore respectfully prays your honorable court to fill the vacancy in the trusteeship in said mortgage or deed
200 of trust caused by the death of said Josiah Bacon, one of the substituted trustees thereunder, by the appointment thereto of some suitable person as trustee in his place and stead.

And it will ever pray, &c.

THE PENNSYLVANIA RAILROAD COMPANY,
By EDMUND SMITH, *Vice-president.* [SEAL.]

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *To wit:*

Personally appeared before the undersigned, a notary public for the city aforesaid, in the State of Pennsylvania, Edmund Smith, who, being duly sworn, says that the matters and facts set forth in the petition hereto annexed are true.

Given under my hand and official seal this thirteenth day of May, A. D. 1881.

JNO. C. SIMS, JR., [SEAL.]
Notary Public.

We, the Alexandria and Fredericksburg Railway Company, and the Pennsylvania Railroad Company the holder of all the bonds of said company secured by the mortgage or deed of trust, dated the first day of June, 1866, hereby acknowledge that we have received ten days' notice in writing of the application to the corporation court of the city of Alexandria, Va., for the appointment of a trustee in and under said mortgage or deed of trust in the place and stead of Josiah Bacon, deceased, and referred to in the foregoing petition.

THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY,
By G. B. ROBERTS, *President.*
THE PENNSYLVANIA RAILROAD COMPANY,
By EDMUND SMITH, *Vice-president.*

201 And upon the same day, to wit, at a corporation court of the city of Alexandria, held at the court-house of said city, on the seventh day of June, 1881,

It appearing to the court by the petition of the Pennsylvania Railroad Company that Josiah Bacon, one of the substituted trustees in a deed of trust executed by the Alexandria and Fredericksburg Railway Company to D. Randolph Martin and Robert Turner, dated the first day of June, 1866, and which is duly of record in the clerk's office of the county court of Alexandria county, Virginia, departed this life on the third day of February, 1881, and it further appearing to the court that it is, among other things, provided in said deed of trust, as follows, to wit: "It is also mutually stipulated, agreed and covenanted, that in the event of the death, resignation or incapacity of said parties of the second part as trustees, or either of them, or his or their successor or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any bondholder giving ten days' notice in writing or otherwise to said railway company, and to the other bondholders, so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship, by giving notice to said bondholder or holders. And the trustee or trustees so appointed, shall have all rights and powers, and perform all the duties which, by operation of this trust, devolved on the parties of the second part herein named."

And it further appearing to the court that the Pennsylvania Railroad Company, the party making said application, is the owner of all the bonds of the said The Alexandria and Fredericksburg Railway Company secured by said deed of trust, and that said The Alexandria and Fredericksburg Railway Company, and Strickland Kneeass, surviving trustee in said deed of trust, have had more than ten days' notice in writing of said application, the court
202 doth therefore order and direct that Joseph N. Du Barry be and he is hereby substituted and appointed trustee in the place and stead of the said Josiah Bacon, and the said Joseph N. Du Barry is substituted to all the rights, powers, duties, and responsibilities of the said Josiah Bacon under the aforesaid deed of trust.

A copy.

Teste: MORTON MARYE, *Clerk.*

VIRGINIA:

Corporation Court of the City of Alexandria.

CLERK'S OFFICE, *July 24th*, 1884.

This order was this day received and recorded.

Teste: JOHN S. BEACH, *Clerk.*

1884, July 24th.—Admitted and recorded in Deed Book No. 14, page 346.

Teste: JOHN S. BEACH, *Clerk.*

In the Clerk's Office Alexandria County Court.

JULY 26TH, 1884.

This order received and recorded in Liber "F," No. 4, page 465.
Teste: BENJ. AUSTIN, *Cl'k.*

Fairfax County Court, July Court, 1881.

"An order of the corporation court of Alexandria city, appointing J. N. Du Barry trustee in the place and stead of Josiah Bacon, deceased trustee in a certain deed of trust executed by the A. & F. R. R. Co. to D. Randolph Martin, &c.," was received and ordered to be recorded.

Given under my hand this 26th July, 1881.

F. W. RICHARDSON,
Clerk of the said Court.

203 STATE OF VIRGINIA, *County of Prince William,* } *To wit:*

I, Lucien A. Davis, clerk of the county court of said county, in the State of Virginia, do certify that I have this day recorded a copy of an order of the corporation court of Alexandria, Va., substituting J. N. Du Barry, as trustee under the mortgage of A. & F. Railway Co. (in room and stead of Josiah Bacon.)

Given under my hand this nineteenth day of July, A. D. 1881.

LUCIEN A. DAVIS, *Clerk.*

VIRGINIA:

In the County Court of Stafford County.

JULY 20TH, 1881.

An order entered in the corporation court of the city of Alexandria in the matter of the application of the Pennsylvania Railroad Company for the appointment of a trustee, is received and ordered to be recorded.

Teste: C. A. TACKETT, *Cl'k.*

Recorded Liber 1, page 186.

VIRGINIA:

In the matter of the application of the Pennsylvania Railroad Company for the substitution of John P. Green, as trustee in the place and stead of Strickland Kneass, as trustee under a deed of trust or mortgage from the Alexandria and Fredericksburg Railway Company, dated June 1st, 1866. Pleas at the court-house of the city of Alexandria, before the corporation court of said city on January 31, 1884,—among the papers and proceedings in this cause will be found the following, to wit:

204 I, J. N. Du Barry, surviving trustee, under the mortgage of the Alexandria and Fredericksburg Railway Company, dated the first day of June, 1866, hereby acknowledge that I have received

ten days' notice in writing of the application to the corporation court of the city of Alexandria, Va., for the appointment of a trustee in and under said mortgage in the place and stead of Strickland Kneass, deceased.

J. N. DU BARRY,
Surviving Trustee.

To the Honorable N. B. Meade, judge of the corporation court of the city of Alexandria, Va.:

The petition of the Pennsylvania Railroad Company would respectfully represent to your honor, that it is the owner of all the bonds of the Alexandria and Fredericksburg Railway Company secured by its deed of trust or mortgage, dated the first day of June, 1866. That Strickland Kneass, one of the substituted trustees under said deed of trust or mortgage, departed this life on the fourteenth day of January, 1884. That for the purpose of meeting and providing for such contingency it is provided in the said mortgage or deed of trust as follows:

It is also mutually stipulated, agreed, and covenanted, that in the event of the death, resignation, or incapacity of said parties of the second part as trustees, or either of them, or of his or their successor or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any bondholder giving ten days' notice in writing or otherwise to said railway company, and to the other bondholders so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship by giving notice to said bondholder or holders.

205 And the said trustee or trustees so appointed shall have all rights and powers, and perform all the duties which by operation of this trust devolved on the parties of the second part herein named.

That ten days' written notice has been given by your petitioner of its intention to make this application to your honorable court to fill the said vacancy to the said The Alexandria and Fredericksburg Railway Company, and to the holder of all the bonds of said company secured by the said mortgage.

Your petitioner, therefore, respectfully prays your honorable court to fill the vacancy in the trusteeship in said mortgage or deed of trust caused by the death of said Strickland Kneass, one of the substituted trustees thereunder, by the appointment thereto of some suitable person as trustee in his place and stead.

And it will ever pray, &c.

THE PENNSYLVANIA RAILROAD COMPANY,
[SEAL.] By EDMUND SMITH, *First Vice-president.*

Attest: JNO. C. SIMS, JR., *Secretary.*

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Personally appeared before the undersigned, a notary public for the city of Philadelphia, in the said State of Pennsylvania, Edmund Smith, who, being duly sworn, says that the matters and facts set forth in the petition hereto annexed are true. Given under my hand and official seal, this twenty-ninth day of January, A. D. 1884.

AL. P. BURCHELL,
Notary Public. [SEAL.]

206 We, the Alexandria and Fredericksburg Railway Company and the Pennsylvania Railroad Company, the holder of all the bonds of said company secured by the mortgage or deed of trust, dated the first day of June, 1866, hereby acknowledge that we have received ten days' notice in writing of the application to the corporation court of the city of Alexandria, Va., for the appointment of a trustee in and under said mortgage or deed of trust in the place and stead of Strickland Kneass, deceased, and referred to in the foregoing petition.

THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY,
By G. B. ROBERTS, *President.* [SEAL.]

Attest: ALBERT HEWSON, *Secretary.*

THE PENNSYLVANIA RAILROAD COMPANY,
By EDMUND SMITH,
First Vice-president. [SEAL.]

Attest: JNO. C. SIMS, JR., *Secretary.*

VIRGINIA:

In the Matter of the Application of THE PENNSYLVANIA RAILROAD COMPANY for the substitution of John P. Green as trustee in the place and stead of Strickland Kneass, as trustee under a deed of trust or mortgage from the Alexandria and Fredericksburg Railway Company, dated June 1st, 1866.

It appearing to the court by the petition of the Pennsylvania Railroad Company that Strickland Kneass, one of the substituted trustees in a deed of trust executed by the Alexandria and Fredericksburg Railway Company to D. Randolph Martin and Robert Turner, dated the first day of June, 1866, and which is duly
207 of record in the clerk's office of the county court of Alexandria county, Virginia, departed this life on the fourteenth day of January, 1884, and it further appearing to the court that it is, among other things, provided in said deed of trust as follows, to wit:

"It is also mutually stipulated, agreed, and covenanted, in the event of the death, resignation, or incapacity of said parties of the second part as trustees, or either of them, or his or their successor

or survivor in this trust, the said trusteeship shall be deemed vacant, and a new trustee or trustees may be appointed by any court of record in Alexandria county, Virginia, upon the application of any bondholder giving ten days' notice in writing or otherwise to said railway company and to the other bondholders so far as known to such party. And the said railway company may likewise apply for the fulfilling of said trusteeship by giving notice to said bondholder or holders. And the trustee or trustees so appointed shall have all rights and powers, and perform all the duties which by operation of this trust devolved on the parties of the second part herein named."

And it further appearing to the court that the Pennsylvania Railroad Company, the party making said application, is the owner of all the bonds of the said The Alexandria and Fredericksburg Railway Company secured by said deed of trust, and that said The Alexandria and Fredericksburg Railway Company and Joseph N. Du Barry, surviving trustee under said deed of trust, have had more than ten days' notice in writing of said application, the court doth thereupon order and direct that John P. Green of the city of Philadelphia, in the State of Pennsylvania, be and he is hereby substituted and appointed trustee in the place and stead of the said Strickland Kneass, and the said John P. Green is substituted to all the rights, powers, duties, and responsibilities of the said Strickland Kneass under the aforesaid deed of trust.

208 STATE OF VIRGINIA, *City of Alexandria,* } *To wit:*

I, John S. Beach, clerk of the corporation court for the city of Alexandria, in the State of Virginia, do certify that the foregoing is a true transcript from the records of the said court.

In testimony whereof, I hereto set my hand and annex the seal of said court, this thirteenth day of February, 1884.

[SEAL.] JOHN S. BEACH, *Clerk.*

VIRGINIA, *City of Alexandria,* } *To wit:*

I, N. B. Meade, judge of the corporation court for the city of Alexandria, in the State of Virginia, and the only judge thereof, do certify that John S. Beach, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand, this fourteenth day of February, 1884.

NATH'L B. MEADE,
Judge of the Corporation Court.

VIRGINIA:

Corporation Court of the City of Alexandria.

CLERK'S OFFICE, *July 24th*, 1884.

This order was this day received and recorded.

Teste: JOHN S. BEACH, *Clerk.*

1884, July 24th.—Admitted and recorded in Deed Book No. 14, page 348.
Teste: JOHN S. BEACH, *Clerk.*

209 1884, Feb. court.—Ordered to be recorded, and recorded in Liber F, No. 4, folio 390 of the land records of Alexandria county court, Virginia.
Teste: BENJ. AUSTIN, *Clerk.*

At a County Court Held for Fairfax County, Va.

FEBRUARY 18TH, 1884.

This writing was this day filed for and ordered to be recorded.
Teste: F. W. RICHARDSON, *Clerk.*

1884, Feb. court.—Ordered to be recorded, and recorded in Liber D, No. 5, on page 79 of the land records of Fairfax county court, Va.
Teste: F. W. RICHARDSON, *Clerk.*

In the Clerk's Office of Prince William County Court.

FEBRUARY 18TH, 1884.

In the matter of the application of the Pennsylvania Railroad Company to substitute trustee was received in clerk's office and admitted to record.
Teste: L. A. DAVIS, *Clerk.*

Recorded in Deed Book No. 34, page 360.

In the Clerk's Office of Stafford County Court.

FEBRUARY 18TH, 1884.

An order of the corporation court of Alexandria, substituting Jno. P. Green trustee of the Alexandria and Fredericksburg Railroad Company, instead of Strickland Kneass, is received and admitted to record.

C. W. SPINDLE, *D. Clerk.*

Liber 2, folio 77.

210 *Authentication of Record.*

Clerk's Office, Corporation Court of the City of Alexandria, Va.

I, John S. Beach, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, except certificates of clerks not recorded in this office, and that said originals, together, constitute the record of the proceedings of said court in this case.

Witness my hand and the seal of said court the 23rd day of March, 1889.

[SEAL.] JOHN S. BEACH, *Clerk.*

I, Charles E. Stuart, judge of said court, do certify the foregoing attestation by John S. Beach, clerk of said court, to be in due form.
Witness my hand and seal this 23rd day of March, 1889.

CHARLES E. STUART, *Judge.*

I, John S. Beach, clerk of said court, hereby certify that Charles E. Stuart, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, judge of said court, duly commissioned and qualified.
Witness my hand and the seal of said court this 23rd day of March, 1889.

[SEAL.] JOHN S. BEACH, *Clerk.*

211 The said defendants also gave evidence tending to show that the trustees under said deed of trust took possession of said road on December 6, 1872, and all of its property of every kind whatsoever, and held, used and operated the same exclusively up to and beyond the time of the said collision, which occurred on the 19th of February, 1885, and that at the time of the said collision the said Alexandria and Fredericksburg Railway Company had in its possession no cars, engines, rolling stock, or any other property whatsoever, and did not have possession of any such property subsequent to 1875, and that the trustees in possession under said deed of trust, as aforesaid, did, in January, 1875, appoint the said George C. Wilkins superintendent of said Alexandria and Fredericksburg railway and property, and that said Wilkins, acting for and under said trustees, had exclusive possession and exclusively managed said railway, and was continuously in notorious public possession thereof, and that the corporation known as the Alexandria and Fredericksburg Railway Company never managed the said property after said month of January, 1875.

The said defendants further gave evidence to the jury tending to show that the defendant The Alexandria and Washington Railroad Company being insolvent and unable to pay its debts, the circuit court of the United States for the eastern district of Virginia entered a decree in the creditors' suit then pending therein, of Alexander Hay, complainant, *vs.* The Alexandria and Washington Railroad Company *et al*, defendants, dated January 19th, 1882, whereby George C. Wilkins was appointed receiver of the said Alexandria and Washington Railroad Company of all and singular the said railroad, its tracks, engines, machinery, and property, books, papers and records, and whereby he was ordered and directed to run and operate the said railroad, keeping the premises and property in repair, and to make all needful and necessary traffic arrangements with other roads, to pay all taxes and do whatever might be
212 needful to preserve the corporate organization, which decree was in the words and figures following, to wit:

Decree Appointing Receiver of the A. & W. R. R.

In the Circuit Court of the United States for the Eastern District of Virginia.

ALEXANDER HAY, Complainant,
vs.
THE ALEXANDRIA AND WASHINGTON RAILROAD COMPANY *et al.*, Defendants.

The motion for the appointment of a receiver coming on to be heard, and the same having been heard and considered, it is by the court on this nineteenth day of January, 1882, ordered and decreed as follows:

First. That George C. Wilkins, the present superintendent of the Alexandria and Washington Railroad Company be and he is hereby appointed receiver of all and singular the railroad, the tracks, engines, machinery and property, real, mixed and personal, referred to in the complainant's bill of complaint as the property of the defendant, The Alexandria and Washington Railroad Company, including the entire line of railroad therein mentioned, all and singular the franchises, land, tenements and hereditaments of the said defendant company, all and singular the books, papers and records thereof, all and singular the rolling stock, tools, machinery, rights and choses in action.

Second. That the said receiver, before entering upon the performance of his duties as such, under this order and decree, execute a bond with sureties to be approved as to form and sufficiency by a judge of this court and filed with the clerk thereof in the sum of twenty-five thousand dollars for the faithful discharge of his duties in the premises.

213 Third. That upon filing such bond the said receiver proceed to take possession of all and singular the premises whereof he is hereby appointed receiver. That he continue to run and operate the said railroad of the said defendant as the same is now operated for the common carriage of freight and passengers, keeping the premises and property, both real and personal, in good condition and repair to the end that said road may be operated efficiently and with safety to the public; that he as such receiver have authority to employ, pay and discharge, all needful servants, agents, attorneys and counsel; to purchase and pay for all needful materials and supplies; to settle and adjust with other roads all traffic balances in the usual course of business, to make from time to time in his best discretion all needful and proper traffic arrangements with other roads for the interchange of business; to pay all taxes on the property whereof he is hereby appointed receiver that may be due and payable or become due and payable during his receivership; to do whatever may be needful and proper to maintain and preserve the corporate organization and franchises of the company until the further order of this court, and to pay and expend such

sums and no more, for that purpose, as may be hereafter on application and hearing ordered by this court.

Fourth. It is further ordered that as soon as may be after the said receiver has entered upon the performance of his duty, he shall make a full, true and perfect inventory of all and singular the real and personal property of every kind and description whatsoever he is hereby appointed receiver, and which may come into his possession, and file the same with the clerk of this court at Alexandria, due notice of such filing to be given to the plaintiff's solicitor. That the said receiver do keep full, true and accurate accounts of all and singular his acts and doings in the premises. That he file with the clerk of the circuit court of the United States for the
214 eastern district of Virginia, at Alexandria, such account within ten days after the expiration of every month of his receivership, and serve copies thereof upon the plaintiff's solicitor, and that he have liberty to pass his accounts from time to time before John S. Fowler, who is hereby appointed a master for that purpose, on ten days' notice to the plaintiff's solicitor after the service upon him of such copy thereof; that any question which may arise on such accounting, when from time to time had and completed, shall be final and conclusive upon all parties, unless on due cause shown the same shall, during the pendency of his action, be opened on special application.

Fifth. It is further ordered that all moneys coming into the hands of said receiver shall be by him deposited in the Citizens' National Bank of Alexandria, to the credit of the receiver. It is further ordered that the said receiver exercising due prudence and caution in the selection of his agents and servants shall not be responsible for their wrongful acts. It is further ordered that the said receiver shall not in any case incur any personal or individual liability in the operation of the said railroad, or in the premises by reason of any act or thing done by him as receiver or by his servants, agents or attorneys, the said receiver acting in good faith, and in the exercise of his best discretion, but the premises of which he is appointed receiver shall nevertheless be chargeable with any judgment which may be established against the receiver in any action brought against him by the leave of this court first had and obtained.

Sixth. It is further ordered that all applications for interlocutory order or relief in this action, by or on behalf of any party thereto, or the receiver therein, shall be made on notice by the moving party to the party or parties of at least ten days exclusive of the day of service, and on due proof of personal service of notice, unless the notice hereby required be waived in writing.

215 Seventh. It is further ordered that the said defendants and all persons whatsoever be, and they are hereby strictly commanded and enjoined peacefully to deliver up and surrender to the said receiver all and singular the premises whereof he is hereby appointed receiver under the penalty attached by law to disobedience. And in the meantime, and until the actual taking possession of the said property by the receiver, it is ordered, the Alexandria and

Washington Railroad Company, its president, officers, agents and attorneys, be and they are hereby enjoined and restrained from disposing of or parting with any of the said property, real or personal, except in the payment of the necessary daily expenses of said road, and that the said company forthwith deposit all moneys and available balances now in its possession or control, and which comes into its possession from day to day, except what is needed for the necessary expenses of the said company, in the Citizens' National bank at Alexandria, Va., subject to the order of this court in this cause.

RO. W. HUGHES, *Judge.*

Alexandria, 19th January, 1882.

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } ss:

I, M. F. Pleasants, clerk of the circuit court of the United States, for the eastern district of Virginia, do hereby certify that the foregoing is a true copy from the record of a decree entered on the 19th day of January, 1882, in the cause therein named.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Alexandria, in said district this 3d day of February, 1888.

[SEAL.] M. F. PLEASANTS, *Clerk.*

216 UNITED STATES OF AMERICA, *Eastern District of Virginia,* } ss:

I, Robert W. Hughes, judge of the United States courts for the eastern district of Virginia, do hereby certify that M. F. Pleasants, who hath given the foregoing certificate, is clerk of the circuit court of the United States for the eastern district of Virginia, and that his said attestation is in due form.

Given under my hand this 3d day of February, 1888.

RO. W. HUGHES, *Judge.*

And that under and in pursuance of said decree the said receiver, on the 19th day of June, 1882, took and held exclusive possession, and exclusively operated and maintained the said railroad from the date of the said decree until after the 19th of February, 1885, a list of all of which property so received by him was given in evidence and is in the words and figures following, to wit:

"Real estate.

A strip of land fifty feet wide, being the eastern half of the ground of the Washington and Alexandria Turnpike Company, and running north and south the entire length of said turnpike, including the eastern viaduct under the Alexandria canal.

This deed for this land is dated April 18, 1855, and was recorded April 20, 1855, in Liber Q, No. 3, page 558, of the land records of Alexandria county, Va.

Also one-half square of ground, on Fayette, Henry and Cameron

streets, Alexandria, Va., being 246 feet 10 inches on Cameron street, and 176 feet 7 inches on Fayette and Henry streets, to the centre of the square. The deed for this land is dated June 9, 1863, and is recorded in Liber V, No. 3, page 218, of the land records of Alexandria county, Va., conveying said half square of ground to the Washington, Alexandria and Georgetown Railroad Company.

217 Also two lots of ground in the square bounded by St. Asaph, Washington, Madison and Montgomery streets, Alexandria, Va., one 92 by 100 feet, and one 83 by 115 feet. The deed for these lots is dated March 19, 1868, and was recorded May 11, 1868, in Liber Y, No. 3, page 385, of the land records of Alexandria county, Va., conveying said lots to S. M. Shoemaker.

Also a right of way through Henry street to Duke street, and a right of way through St. Asaph street to Princess in the city of Alexandria, Va.

Tracks.

A single track from Duke street in Alexandria to St. Asaph junction, 1.33 miles, and a double track from St. Asaph junction to the south end of the Long bridge, 3.63 miles.

Side tracks.

At Waterloo	1,092	feet.	
At Four-mile run	545	"	
West siding at Henry street	205	"	
East siding at Henry street	206	"	
St. Asaph branch from St. Asaph junction to Princess street	5,660	"	
Portner's siding	302	"	
Total sidings to east track	8,010	"	1.52 miles.
At Fort Runyon	417	feet.	
At Washington and Ohio junction	1,162	"	
Connection with W. O. and W. R. R.	220	"	
One cross-over at Waterloo	130	"	
Three cross-overs at W. and O. junction	405	"	
One cross-over at St. Asaph junction	141	"	
Total sidings to west track	2,475	"	.47 miles.

218 Of the east track and sidings 5.90 miles is laid with iron, and 5.8 miles with steel rail; 6.48 miles.

Of the west track and sidings 3.68 miles is laid with steel rail, and .42 miles with iron; 4.10 miles.

Bridges.

Two trestle bridges, each 37 feet 5 inches long.
Two pile bridges, " 780 " 6 inches long.
Two brick arches, each 8 feet span.
Two stringer bridges, each 14 feet 8 inches long.

Culverts and drains.

Five terra-cotta drains.
Two stone culverts.
Forty-three wooden drain boxes.

Passenger platforms.

Two at south end of Long bridge, each 100 feet by 8.
Two at Fort Runyon, each 100 feet by 8.
Two at Waterloo, each 100 feet by 8.
Two at Four-mile run, each 100 feet by 8.
Two at Washington and Ohio junction, each 100 feet by 8.

Tools.

Six shovels, one truck wrench, one lamp, two spiking hammers, one level board, four picks, and one track gauge.

All the above-described property, both real and personal, is located and held, partly in the county of Alexandria and partly within the corporate limits of the city of Alexandria, Va., and is now and has been since January 19th, 1882, in possession of and under the control of Mr. George C. Wilkins, as receiver of said property, appointed by a decree in this cause, entered on the 19th day of January, 1882."

219 And that said Alexandria and Washington Railroad Company when the receiver took possession had no rolling stock whatsoever and acquired none afterwards.

And George C. Wilkins, who was the receiver of the Alexandria and Washington Railroad Company, as aforesaid, and who had been from 1875 to June 1, 1883, superintendent of the Alexandria and Fredericksburg railroad under appointment and the authority of the said trustees of said company as aforesaid, and during the same period had been superintendent of the Alexandria and Washington railroad, being examined by all the defendants except the Virginia Midland Railway Company was asked the following question and gave thereto the following answer, to wit:

"Q. What management or control, if any, did the Pennsylvania Railroad Company, as a corporation, have and exercise over the road that you held as receiver during this period? Tell us what they did.

"A. It had no control whatever."

And being at the same examination cross-examined by counsel for the two plaintiffs in both said causes the said Wilkins being asked as follows answered as follows, to wit:

Q. Is it true that the Alexandria and Washington railroad was operated on 4.96 miles from Alexandria to the south end of Long bridge in 1885?

A. By whom?

Q. By anybody?

A. Certainly it was operated.
Q. By whom?
A. By the receiver, George C. Wilkins.
Q. By anybody else?
A. By no one else.
Q. In whose interest?
220 A. I could not tell you, it was to whom it might concern. It was in the hands of the court; the object of putting it into court being as I understood, to learn who were the owners of it.
Q. Had the Pennsylvania railroad any interest in its operation?
A. It had nothing whatever to do with the operation of the Alexandria and Washington railroad.
Q. That is not the question; it had no interest?
A. No, sir.
Q. That you testify to distinctly?
A. Yes, sir.
Q. How do you know?
A. For the simple reason that I made all my returns to the court. All the money that came into my hands, as receiver, I paid over by direction—or deposited, rather—by direction of the court in one of the banks in Alexandria.
Q. How do you know that back of your receivership the Pennsylvania railroad did not repose and have an interest in all that you did as receiver?
A. I can only testify as to the fact of what I did with the money.
Q. What did you do with it?
A. I deposited it, as I have stated.
Q. Where did it go then?
A. I afterwards distributed it by direction of the court.

The said defendants also in order to maintain the issues on their part joined, introduced evidence tending to show that from the date of the said order appointing the said Wilkins receiver until after the 19th of February, 1885, the said Alexandria and Washington Railroad Company had no cars, engines, rolling stock or other personal property except that mentioned in said schedule. That the said receiver continued the arrangements with the defendant The Virginia Midland Railroad Company, the defendant The Baltimore and Potomac Railroad Company, and with Du Barry and Green, trustees of the Alex-
221 andria and Fredericksburg railway, which he found in existence, whereby said companies used the said railroad in his custody and charge as aforesaid, and that the Virginia Midland railway paid the receiver for the use of the tracks of the Alexandria and Washington railroad. That the Baltimore and Potomac Company and the trustees of the Alexandria and Fredericksburg Railway Company did business over the tracks of the Alexandria and Washington railroad on the trackage basis and that the receipts from business done over the line of said railroad by the said Baltimore and Potomac Railroad Company and the said trustees and the receiver were divided amongst them on the *pro rata* basis, each re-

ceiving the same proportion thereof as the miles of track of each road sustained to the whole number of miles over which the business was done, due allowance being made for terminal facilities and the "Long bridge."

That the same arrangement existed before the appointment of the receiver, but that after the receiver took possession, the gross receipts of the road went into the hands of J. S. Leib, treasurer of the three roads, and the net proceeds were distributed *pro rata* by the common auditor, and the receiver received the *pro rata* share of the A. & W. road.

That on taking possession of the road he, as receiver, appointed Pugh, Carter, and the other agents who managed the business of the road, and that he settled his accounts in his name as receiver, and that such agents and officers were so selected and appointed by him because it was more economical to use those agents who were also agents of the Baltimore and Potomac and of the said trustees of the Alexandria and Fredericksburg Railway Company than to appoint a staff of officers not employed by the said other company and said trustees.

And the said defendants, except the Virginia Midland Railway Company, further gave evidence to the jury tending to show
222 that the crew of the Fredericksburg fast freight train which collided with the Virginia Midland train on the night in question, was composed of Andrew J. Augur, conductor; W. T. Miles, George E. Miller, and Charles T. Stevens, brakeman, Thomas Maloney, fireman, and George Frere, engineman, (and that they were all furnished by the trustees of the Alexandria and Fredericksburg Railway Company,) and also that the pilot, C. S. Bennett, who was pilot on the north-bound passenger train which was in the said collision, was paid by said trustees, and that the reason the names of Frere, Augur and Maloney appear on the pay-rolls of the Baltimore *at* Potomac railroad is as follows, as stated by the witness George C. Wilkins, to wit:

Question. "Can you explain how those three names got on the pay-rolls of the Baltimore and Potomac Maloney, Frere and Augur?

"A. There was only the engineman and fireman on the Potomac road.

"Q. How did it happen that these two names that were running on the road of the trustees of the Alexandria and Fredericksburg—that their names were on the pay-roll of the Baltimore and Potomac?

"A. For the reason that the Alexandria and Fredericksburg had no shops and the motive-power account was kept by the motive-power clerk of the Baltimore and Potomac Railroad Company. The names appear on the Baltimore and Potomac Company's roll therefore, and the amount of time made on the line south of Washington is charged out to the proper company and collected from the company.

"Q. Who, then, was actually charged with that item of expenditure?

"A. The Alexandria and Fredericksburg road paid its propor-

tion of the expense, and the Alexandria and Washington its proportion."

And the said defendants further gave evidence tending to
223 show that under the rules and regulations so put in evidence by the plaintiffs and set out in the foregoing exception made part hereof, the said north-bound passenger train was not entitled to any priority over the south-bound freight train; that both trains were required by said rules to approach the end of the double track and gauntlet prepared to stop, and at the gauntlet must not proceed until the switches and signals were seen to be right and the track plainly seen to be clear.

And the said defendants also gave testimony tending to show that when the north-bound passenger train approached the gauntlet it was not prepared to stop, but was running at the rate of from twenty-five to forty-five miles per hour, and that the engineman, Bruce, could have seen and did see on that occasion that the south-bound freight train was on the track on the north side of the arch.

And the said defendants further to support the issues on their part joined, introduced one Thomas Taylor, who testified that after getting the engineman Bruce into his (Taylor's) house, which was near by, immediately after the collision, he kneeled down by him and asked him how it happened, and Bruce said that he "saw the other train (the fast-freight train) but thought that she was standing still, and when he found out his mistake he tried to clear the arch and ran as fast as he could." And Taylor also said, "I asked him how his signal was and he told me that the signal was white." Taylor also testified that he was in the employ of the railroad company to collect tolls on the turnpike and take care of the automatic signals.

That the said Bruce, at the same time, and immediately after the collision, and while he believed himself in a dying condition, told the witness Burke, in response to questions, in speaking of the same collision: "I saw the light of the freight when she was on Hunter's hill, when I was at the junction. I tried to get out of the
224 way, but she came down on me at the rate of forty miles." "Then he broke off the conversation and it seemed as though he was breathing rather heavily; he spoke in rather broken sentences, and would pause between them."

That said Bruce, on another occasion, about a month after the collision, told the witness Alfred Redmiles, in answer to a question as to how the collision occurred, "that he saw the freight train standing on the north side of the tunnel, but he thought it was standing still, and just in the act of coming to the signal. The freight train turned the red signal on him, but he was so close he could not stop, and he thought he would get through before the accident occurred." But the said Bruce, on cross-examination, denied having so said to Redmiles or any one else.

And the said defendants further introduced testimony by the depositions of the witnesses Gaballe, Ackerman, Kirkwood, Freer and the witnesses Miller, Childress, Kistler and others, that the

speed of the said north-bound passenger train was, at the time when the collision occurred, from twenty-five to forty-five miles an hour.

And further to maintain the issues on their part joined, the said defendants introduced testimony to show that the automatic electric-light signals at said gauntlet were erected and put in use by the directions of the said George C. Wilkins, receiver, in June, 1884, in pursuance of permission of the court which appointed him such receiver. And John M. Kates, a witness for the defendants, testifies that he put in said signals, on the direction of H. H. Carter, superintendent, and that at the time witness was the operator of the Maryland division of the Pennsylvania railroad, and of the Philadelphia, Wilmington and Baltimore railroad.

Be it remembered that upon the trial of the above-entitled
225 causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are hereby made a part hereof, evidence having been introduced on the part of the defendants, (to maintain the issues on their part joined), tending to show that the collision from which the damage resulted occurred at "the gauntlet" at Four Mile Run arch, and evidence showing the rules governing the passing of trains over a single track and over a double track and through "the gauntlet," George C. Wilkins, who it was shown by his own testimony, was an expert railroad manager and operator, and the receiver of the Alexandria and Washington railroad, and prior thereto the general manager thereof, and by whom the rules were prepared, was asked by the counsel for all of the defendants except the Virginia Midland Railway Company, which trains, freight or passenger, north or south bound, had, if either had the right of way at the gauntlet, which question was objected to by the counsel of the Virginia Midland Railway Company, which objection was by the court sustained, and the witness was not permitted to answer the said question; to which ruling of the court sustaining the said objection and refusing to allow the witness to answer the said question the said counsel for the said defendants then and there excepted and the said exception was at the time noted upon the minutes of the court and the said counsel for the said defendants pray the court to sign and seal this their sixteenth bill of exceptions, which is accordingly done, now for then, this 15 day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the said witness, George C. Wilkins, who had been called and examined as a witness on behalf of the defendants, and who testified in relation to the issue on their part joined, was cross-examined on the part of
226 the plaintiffs, who handed to the said witness what purported to be a copy of the printed report (with a map, which map is set out in full in one of the exceptions hereto attached) of the Pennsylvania Railroad Company, and the witness was, by plaintiffs' counsel, asked whether it was a correct copy, and answered: "I do not know whether it is or not. I did not make it."

Being further asked whether these reports were issued annually, he answered: "I believe that to be a copy of the Pennsylvania annual report for 1885."

Question. "Did you receive it?"

Answer. "Not that copy, but a similar copy, to the best of my knowledge."

Question. "Published by the authority of the Pennsylvania Railroad Company?"

Answer. "Yes, sir."

To the asking of which questions and the introduction of the answers thereto in testimony the counsel for all the defendants in both cases, except the Virginia Midland Railway Company, objected, which objection was by the court overruled; to which ruling of the court the said counsel for the said defendants then and there excepted and the said exceptions was at the time noted upon the minutes of the court, and the said counsel for the said defendants pray the court to sign and seal this, their seventeenth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bill of exceptions, which are made a part hereof, the plaintiffs (to maintain the issue on their part joined, having given evidence in relation to the said map and to the said report of the Pennsylvania Railroad Company for the year 1884,) as in the last bill of exceptions mentioned, in further cross-examination of the said
227 witness, George C. Wilkins, offered the said report, (with the map) bearing date the 2d day of March, 1885, and to read (the same) in evidence. To the receipt of the said report and map (said map is set out in the next ensuing bill of exceptions), and the reading of the same in evidence, the counsel for all the defendants in both cases, except the counsel for the Virginia Midland Railway Company, objected, which objection was by the court overruled; to which ruling of the court the said counsel for the said defendants then and there excepted, and the said exception was at the time noted upon the minutes of the court; and thereupon the following parts of and quotations from said report were read in evidence to the jury notwithstanding the objections of the counsel for the defendants, to wit:

"Office of the Pennsylvania R. R. Co.

"PHILADELPHIA, *March* 2, 1885.

"To the shareholders of the Pennsylvania Railroad Co.:

"The board herewith submit their report for the year 1884, with such data relating to the lines controlled by your company as will give you a clear understanding of their physical and financial condition.

"The statements immediately following showing the results on the three divisions operated by the company east of Pittsburg and Erie, to wit:

"1. The Pennsylvania railroad division.

"2nd. The Baltimore and Potomac railroad connects your lines with Washington and the south. It shows the following results for 1884:

"Its gross earnings were, 1884, $1,224,572.14; 1883, $1,156,419.52. Increase or decrease, I. $68,152.62.

"And the operating expenses were, 1884, $838,938.23; 1883, $809,291.68. Increase or decrease, I. $29,646.55.

228 "Leaving as net earnings, 1884, $385,633.91; 1883, $347,127.84. Increase or decrease, I. $38,506.07.

"Deduct interest on funded debt, $270,000.00. Interest on temporary debt, incurred in completing second track, $51,261.15. Rents, etc., $5,845.34.

	1884.	1883.	Increase or decrease.
	$327,106.49	$273,845.49	I.... $53,261.00
Balance of net income..	$58,527.42	$73,282.35	D... $14,754.93

"In addition to the operations as above, there was expended during the year for real estate, the sum of $29,180.62.

"This line continues to show an increase in both its gross and net earnings, and is now able to more than pay the interest upon all its fixed charges."

To the admission of which last-quoted words the said counsel for the said defendants objected, which objection was by the court overruled, and said defendants duly excepted at the time.

"3rd. The Alexandria and Fredericksburg railway is still operated by trustees. Its results show an improvement over the preceding year."

To the admission in evidence of the last above-quoted words the said counsel for the said defendants also objected, which objection was by the court overruled, and said defendants duly excepted at the time.

4th. List of bonds owned by the Pennsylvania Railway Company, December 31st, 1884:

Name of security.	No. of bonds.	Rate of par.	Per value.
Alexandria & Fredericksburg railway first mortgage, 7 per cent., gold.....	1,000	$1,000	$1,000,000 00
Baltimore & Potomac railroad second mortgage, income, 6 per cent.....	2,000	1,000	1,000,000 00

229 To the admission in evidence of the above-quoted words the said counsel for the said defendants objected, which objection was by the court overruled.

"5th. Statement of tonnage, mileage, loaded freight-car mileage, and average car-load on the Pennsylvania railroad, Northern Central railway, Baltimore and Potomac railroad, Alexandria and Fredericksburg railway, Philadelphia, Wilmington and Baltimore railroad, West Jersey railroad, and Camden and Atlantic railroad."

To the admission in evidence of the above-quoted words the said counsel for the said defendants objected, which objection was by the court overruled, and said defendants duly excepted at the time.

"6th. Motive power. Locomotives for the Baltimore & Potomac R. R. Co. Passenger equipment. For the Baltimore & Potomac R. R. Co., 5 passenger cars."

To the admission in evidence of the above-quoted words the said counsel for the said defendants objected, which objection was by the court overruled, and the said defendants excepted at the time.

Whereupon the said counsel for plaintiffs further offered to read in evidence to the jury from said report dated March 10th, 1885, a list of stocks owned by the Pennsylvania Railroad Company on December 1st, 1884, but to the reading in evidence thereof counsel for the defendants in both suits, (except the Va. Mid. R. W. Co.) objected, which objection was overruled by the court, and said counsel for said defendants then and there duly excepted, and the said list was allowed to be and was read in evidence to the jury, which said list was in the words and figures following, to wit:

No. "7th. List of stocks owned by the Pa. R. R. Co., Dec. 31st, 1884, 60,852 shares of the stock of the Baltimore and Potomac Railroad Company, $50.00 per share par value; total par value, $3,420,600; 217,819 shares of the Philadelphia, Wilmington and Baltimore Railroad Company's stock, par value, $50.00 per share; total value, $10,890,950.00."

And then the said counsel for the plaintiffs offered to read in evidence to the jury from the said report of the Pennsylvania Railroad Company, dated March 10th, 1885, the title-page thereof, but the counsel for the defendants objected, but the court overruled the objection, and thereupon the said title-page of said report was by plaintiffs read in evidence to the jury, and is in the words and figures following, to wit:

No. 8. "Thirty-eighth annual report of the board of directors of the Pennsylvania Railroad Company to the stockholders. Presented at the meeting held March 10th, 1885."

And thereupon at the same time said counsel for the plaintiffs offered to read in evidence to the jury the list of officers and directors of the Pennsylvania Railroad Company, found on the 2d page of said report, and thereupon counsel for the defendants, except the Virginia Midland Company, objected, but the objection was overruled, and counsel for the said defendants duly excepted, and then said list was read in evidence to the jury, and is in the words and figures following, to wit:

No. 9. "Directors of the Pennsylvania Railroad Company for the year 1885–'86."

"George B. Roberts, Wistar Morris, Alexander M. Fox, Alexander Biddle, N. Parker Shortridge, D. B. Cummins, Henry D. Welsh, John Price Wetherill, William L. Elkins, William Thaw, H. H. Houston, A. J. Cassatt, C. A. Griscom, Edmund Smith, Frank Thompson, J. N. Du Barry, John P. Green.

231 "President, George B. Roberts; first vice-president, Edmund Smith; second vice-president, Frank Thomson; third vice-president, J. N. Du Barry; fourth vice-president, John P. Green; treasurer, John D. Taylor; general solicitor, John Scott; secretary, John C. Sims, Jr."

To which rulings of the court, and each of them, overruling the said objections, and admitting the said portion and quotations and lists, and the said testimony in evidence, and allowing the said quotation, numbered above—1, 2, 3, 4, 5, 6, 7, 8 and 9, to be read to the jury, the said counsel for the said defendants then and there excepted at the several times thereof, and the said exceptions were at the several times thereof noted upon the minutes of the court, and the said counsel for the said defendants prayed the court to sign and seal this, their eighteenth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes the plaintiffs (to maintain the issue on their part joined), on the further cross-examination of the said witness, George C. Wilkins, having offered in evidence the certain report and map therein contained in the foregoing exceptions mentioned, and interrogated the said witness in relation thereto and given the said map in evidence, further inquired on said cross-examination of said witness in relation to said map, which map was given in evidence by the plaintiffs, and is in the words, lines and figures, to wit:

(Map follows, and is here inserted in the original.)

(Here follows map marked p. 231.)

Question. "I have reference to the certain letters starting at Philadelphia and passing over to Baltimore and coming down to

232 Quantico," pointing them out; "I want you to tell me what those letters stand for."

To which question the counsel for all the defendants in both suits, except the Virginia Midland railway, objected.

Whereupon the said question was amended. Question: "Does this, for instance—there is nothing mysterious about it—starting at Philadelphia, it is P., W. & B.—then it is B. & P. R. R.—then it is A. & F. R. R.—then A. & W. It traces the several lines from Philadelphia down by small initials. What do the initials—small letters from Philadelphia down to Quantico, indicate?"

To which question so amended, the said counsel for the said defendants then and there objected.

Which objections were by the court overruled, and the said witness was permitted to answer each of the said questions and did answer that the P., W. & B. meant the Philadelphia, Wilmington and Baltimore railroad; the B. & P. meant the Baltimore & Potomac; the A. & F. the Alexandria and Fredericksburg railway, and the A. & W. the Alexandria & Washington railroad.

To which ruling of the court overruling the said two objections and allowing the said testimony to be given in evidence, the said counsel for the said defendants then and there excepted, and the said exception was at the time noted upon the minutes of the court, and the said counsel for the said defendants prayed the court to sign and seal this, their nineteenth bill of exceptions, which was accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing
233 bills of exceptions, which are made a part hereof, the plaintiffs in order to maintai*d* the issues on their part joined on the cross-examination of the said witness, George C. Wilkins, he having first testified that said ticket was offered & admitted in evidence, it was shown by the cross-examination of said Wilkins that the stamp on the back was the official stamp of the Pennsylvania Railroad Company, and the ticket was issued in the city of Baltimore, and that he was well acquainted with the custom of railroad companies in issuing tickets, and that they frequently issued tickets to pass over other roads than those owned or controlled by them, in connection with their own roads, but that he had never known any railroad company to issue a ticket where some part of the journey for which the ticket was issued, was not over some part of a road owned or controlled by the company issuing the ticket. Showed him a ticket and asked the witness "What is the coupon attached to it." Answer. The coupon says: "Issued by the Pennsylvania Railroad Company on account of the Alexandria and Fredericksburg railway, one first-class ticket from Washington to Quantico-This check is not good if detached."

Question. "That ticket would carry a passenger over the Alexandria and Washington railroad to Quantico, would it not?

Answer. It would not. It would when it was issued, June 8, 1881, I think."

Which ticket was thereupon offered in evidence by the plaintiff; to the introduction of which ticket in evidence the counsel in both suits for all of the said defendants, except the Virginia Midland railway, objected, which said objection was by the court overruled, and the said ticket, which was in words and figures following, to wit:

"Pennsylvania Railroad Company." This ticket entitles the holder to one first-class passage to Quantico, Va.
234 "This ticket is void unless officially stamped and dated. In selling this ticket passing over other roads, this company

acts only as agent and assumes no responsibility beyond its own line. This company assumes no risk on baggage except for wearing apparel, and limits its responsibility to one hundred dollars in value, all baggage exceeding that value will be at the risk of the owner unless taken by special contract. The checks belonging to this ticket will be void if detached. 8609.

"249. L. P. FARMER,
"*General Passenger Agent.*"

On side of ticket: "Issued by the Pennsylvania Railroad Co., on account of Alexandria & Fredericksburg R. W. One first-class passage. Washington to Quantico. This check is not good if detached. 8609. Quantico, Va."

On back of ticket the following words and figures are stamped:

"Pennsylvania Railroad Co. 312. Passenger department. Baltimore, June 8, 1881, N. C. R. R.," was then and there admitted in evidence to the jury; to which ruling of the court allowing the said ticket to be admitted in evidence, the said counsel for the said defendants then and there excepted, which exception was at the time noted upon the minutes of the court and the said counsel for the said defendants prayed the court to sign and seal this, their twentieth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the plaintiffs, in order to maintain the issues on their part joined, having asked
235 the said witness, George C. Wilkins, on cross-examination, if he knew who paid the owners the damage sustained by them for the goods on the freight train which collided, and the witness having answered that he did not know that they had been paid, further asked said witness on cross-examination:

Question. "Did not the general agent of the Pennsylvania Railroad Company make a demand upon you as the receiver of the Alexandria and Washington road to reimburse him for the freight which he claims he had paid for, growing out of that accident?"
Answer. "He did."

To which question and answer the counsel for all the defendants in both causes, except the Virginia Midland Railway Company, objected, and then and there moved that said answer be stricken out; which objection and motion to strike out the said answer was overruled; to which ruling of the court overruling the said objection and denying the said motion, the said counsel for the said defendants then and there excepted, which exception was at the time noted upon the minutes of the court. And the said counsel for the said defendants prayed the court to sign and seal this, their twenty-

first bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are hereby made a part hereof, the plaintiffs, in order to maintain the issues on their part joined, further asked the said witness, George C. Wilkins, on cross-examination:

Question. "Did you not file with your answer as receiver
236 to the petition of the Virginia Midland Railway Company, bills with Mr. John S. Fowler, presented by the general freight agent of the Pennsylvania Railroad Company, sent to you, and upon which the payments mentioned were made?"

To which question the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, objected, which objection was by the court overruled; which question the plaintiffs thereupon modified, as follows:

Question. "Pages 34, 35, 36, marked in Roman numerals in the book purporting to contain the proceedings upon the petition and answers aforesaid, show these bills. What was contained in those papers is substantially what was contained in the papers you filed with your answer?"

Answer. "Yes, sir; these three bills made against the Alexandria and Washington Railroad Company to the Pennsylvania Railroad Company, debtor, for portion of loss, damage and incidental expense claims paid by the general freight department in the month of June, 1885, amounting to $711.67, the second and third bills are for the same things, but for different amounts."

To which question and answer the counsel for the said defendants at the time thereof objected, and the objection was by the court overruled, and the said counsel for the said defendants then and there excepted.

Whereupon the counsel for the plaintiffs further asked the said Wilkins in relation to the same matter, whether the losses claimed in these three bills were losses growing out of the loss of freight on the freight train which collided with the passenger train on February 19, 1885.

To which question the counsel for the said defendants objected,
and the said objection was by the court overruled, and the
237 said defendants duly excepted at the time, and the witness was then allowed to answer and did answer, "Yes, sir; they are."

And the said witness was further asked in cross-examination by the said plaintiffs in relation to the same matter:

Question. "Now, Exhibit No. 3 embraces these three accounts, and Exhibit 3 consists of these three accounts as having been presented to you by the Pennsylvania Railroad Company?"

The witness answered: "It does, and more."

Question. "It embraces these three accounts and the accounts of the rolling stock destroyed as well."

Whereupon the counsel for the plaintiffs offered in evidence, in connection with the cross-examination, the said clauses in the paragraph of the answer referred to, together with the accounts and the account of the rolling stock, which accounts had previously been shown to have been presented to the said witness by the general freight agent of the Pennsylvania Railroad Company, and by said witness filed with his said answer.

To which question and answers, and the said offer, giving in evidence a portion of the said answer and the said amounts, the said counsel for the said defendants objected, but the objection was overruled and the counsel for the defendants excepted.

The portion of the answer objected to and admitted in evidence was in words and figures following, to wit:

"Your respondent therefore prays that the petition be dismissed, and that your honor will grant an order that the said petitioner be required to reimburse your respondent for the damage to the property alleged to have been under his charge as per the accompanying Exhibit No. 3, if it shall appear that your respondent as receiver is responsible for the same."

238 And which said accounts are in the words and figures following, to wit:

No. 353. PHILADA., *July* 1, 1885.

Alexandria & Washington R. R. Co. to Pennsylvania R. R. Co., Dr.

For proportion of loss, damage, and incidental expense claims paid by gen'l freight dep't in the month of June, 1885, as follows:

Number.		Favor of—	Amount.	Proportion due.
Claim.	Bill.			
209	3,301	Wm. F. Potts, Son & Co	32 75	32 75
210	3,302	Foy, Harman & Chadwick	84 03	84 03
221	3,313	Coffin, Altemus & Co	121 41	121 41
222	3,314	Edwin Hill	78 00	78 00
223	3,315	L. L. Marvin & Co	97 48	97 48
224	3,316	Wilcox & White Organ Co	100 00	100 00
226	3,318	St. John Sewing Mche. Co	68 00	68 00
237	3,329	William C. Codd	93 00	93 00
242	3,334	H. B. Smith Mche. Co	37 00	37 00
				711 67

To Mr. George C. Wilkins, receiver.

DEAR SIR: Please remit at your earliest convenience to—

Respectfully, JOHN S. WILSON,
Gen'l Freight Agent.

239 No. 340. PHILADA., *June* 1, 1885.

Alexandria & Washington R. R. Co. to Pennsylvania Railroad Co., Dr.

For proportion of loss, damage, and incidental expense claims paid by the gen'l freight dep't in the month of May, 1885, as follows:

Number.		Favor of—	Amount.	Proportion due.
Claim.	Bill.			
161	3,257	Harrison, Havemeyer & Co.	1,240 83	1,240 83
165	3,261	Edward Meller & Co. (add'l)	30 10	30 10
166	3,262	R. H. Woolston	12 13	12 13
167	3,263	Ira Day, ag't.	66 48	66 48
171	3,267	R. B. Glanville, ag't.	11 20	11 20
172	3,268	T. M. Smith & Co.	396 00	396 00
173	3,269	Proctor & Gamble.	1,864 59	1,864 59
174	3,270	S. G. B. Cook & Co.	64 30	64 30
175	3,271	Keen & Hagerty.	158 90	158 90
176	3,272	Balto. United Oil Co.	524 88	524 88
190	3,286	H. W. Rountree.	122 71	122 71
189	3,285	A. Colburn & Co.	35 00	35 00
				$4,527 12

Forty-five hundred & $27\frac{12}{100}$ dol.

To Mr. George C. Wilkins, receiver.

DEAR SIR: Please remit at earliest convenience to—

Respectfully, JOHN S. WILSON,
Gen'l Freight Agent.

240 No. 330. PHILADELPHIA, *May* 1, 1885.

Alexandria & Washington R. R. Co. to Pennsylvania R. R. Co., Dr.

For proportion of loss, damage, and incidental expense claims paid by general freight department in the month of April, 1885, as follows:

Number.		Favor of—	Amount.	Proportion due.
Claim.	Bill.			
109	3,208	Havemeyer Sugar Ref'r. Co	444 12	444 12
110	3,209	E. Wise & Son	93 75	93 75
111	3,210	Cavey Bros. & Grevemeyer	3 84	3 84
112	3,211	Darby & Co	28 95	28 75
113	3,212	Tolwell Bros. & Co	67 32	67 32
114	3,213	Novelty Electric Co	55 00	55 00
115	3,214	S. A. Kochersberger	16 75	16 75
116	3,215	Janney & Wood	404 88	404 88
117	3,216	Fred. Walpert & Co	15 83	15 83
118	3,217	Gilbert Bros. & Co	20 45	20 45
119	3,218	Patterson, Renshaw & Co	102 52	102 52
120	3,219	Wilson, Burns & Co	17 69	17 69
121	3,220	Augustine, Harwood & Walkins	367 66	367 66
122	3,221	Smith, Dixon & Co	458 00	458 00
123	3,222	Everett Waddey	120 00	120 00
124	3,223	Manville & Co	18 60	18 60
125	3,224	Bendheim Bros. & Co	74 50	74 50
126	3,225	W. C. Moore	371 30	371 30
127	3,226	L. & S. Sternberger	163 75	163 75
128	3,227	J. S. Joins & Son	45 10	45 10
129	3,228	Busby & Shein	36 90	36 90
130	3,229	J. A. Slaughter	5 55	5 55
131	3,230	Guggenheimer & Co	449 97	449 97
132	3,231	C. E. Robinson & Bros	9 38	9 39
133	3,232	Saller & Lewin & Co	168 00	168 00
135	3,234	Hirsh & Bro	226 40	226 40
140	3,239	J. Latham & Co	13 20	13 20
141	3,240	Bosshardh & Wilson	556 03	556 03
142	3,241	A. R. McCown & Co	48 51	48 51
143	3,242	Edward Mellor & Co	471 51	471 51
				$4,875 46

To Mr. George C. Wilkins, receiver.

DEAR SIR: Please remit at earliest convenience to—

Respectfully, JOHN S. WILSON,
Gen'l Freight Agent.

241 Which several objections were by the court overruled at the time and the said testimony was allowed to be given to the jury.

To which said several rulings of the court and the admitting in evidence to the jury of the said several answers of the witness and said accounts, and said exhibits, and said extracts from said answer, the said counsel for the said defendants then and there, and at the

several times thereof, and to each separately, excepted, which exceptions were severally noted upon the minutes of the court at the time, and the said counsel for the said defendants prayed the court to sign and seal this, their twenty-second bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made part hereof, the plaintiffs (to maintain the issue on their part joined,) further cross-examined the said witness George C. Wilkins in relation to another printed report purporting to be a report of the Pennsylvania Railroad Company made to its stockholders, and asked the said witness: "Look at this document, and see if it is the report of the directors of the Pennsylvania Railroad Company to its stockholders of the operations of that road in the year 1885."

To which question the counsel for all of the defendants in both cases, except the Virginia Midland Railway Company, objected, which objection was by the court overruled and the witness was allowed to answer, and did answer, "I think it is a partial report. I do not think it is a whole report."

Question: "Is it a report as far as it goes?"

Answer: "Yes, sir."

242 Whereupon the plaintiffs offered in evidence the said document.

To which question, answer, and offer, and to the giving in evidence of said document, the said counsel for the said defendants objected, which objection was by the court overruled and counsel excepted.

And the counsel for the plaintiffs, notwithstanding said objection, then read to the jury from said document the words and figures following:

"*Thirty-ninth Annual Report.*

"OFFICE OF THE PENNSYLVANIA RAILROAD CO.,
"PHILADELPHIA, *March* 1, 1886.

"To the stockholders of the Pennsylvania Railroad Company:

"The board herewith submits its report for the year 1885, with such data relating to the lines embraced in your system as will give you a clear understanding of their physical and financial condition."

To the reading in evidence from said document of the above-quoted words, the said counsel for the said defendants objected, which objection was by the court overruled, and the said words were allowed to be read to the jury, to which ruling of the court allowing the said words to be read to the jury, the said counsel for the said defendants then and there excepted.

Whereupon the plaintiffs further offered to read from said report the following words and figures:

"The Baltimore and Potomac Railroad Company connects your lines with Washington and the South."

To the reading in evidence of which last above quoted words the said counsel for the said defendants objected, and which said
243 objection was by the court overruled, and the plaintiffs were allowed to read the same to the jury, to which ruling of the court, allowing the said words to be read to the jury, the said counsel for the said defendants then and there excepted.

Whereupon the said counsel further offered to read in evidence to the jury, from page 38 of said report, a list of bonds owned by the Pennsylvania Railroad Company, December 31, 1885.

To the reading in evidence of which list the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, objected, which objection was by the court overruled, and the said list of bonds was allowed to be and was read to the jury, which said list was in the words and figures following:

"List of bonds owned by the Pennsylvania Railroad Company, December 31, 1885:

"Alexandria and Fredericksburg Railway, first mortgage, 7 per cent. gold; number of bonds, 1,000; rate of par, $1,000; par value, $1,000,000; Baltimore and Potomac railroad, second mortgage income, 6 per cent.; number of bonds, 2,000; rate of par, $1,000; par value, $3,000,000."

Whereupon the said counsel further offered to read in evidence to the jury from said report a list of stocks owned by the Pennsylvania Railroad Company on December 31, 1885, but to the reading in evidence thereof counsel for all the defendants in both suits, except the Virginia Midland Railway Company, objected, which objection was overruled by the court, and said counsel for defendants then and there duly excepted, and the said list was allowed to be and was read in evidence to the jury; which said list was in the words and figures following, to wit:

244 "List of stocks owned by the Pennsylvania Railroad Company, December 31, 1885: 160 shares; 60,852 of the Baltimore and Potomac Railroad Company, $50 per share par value; total par value, $3,042,600. Number of shares, 217,819 of the Philadelphia, Wilmington, and Baltimore railroad, $50 per share par value; total par value, $10,890,950."

And then the said counsel for plaintiffs further offered to read in evidence to the jury from said report of the Pa. R. R. Co., dated March 9, 1886, the title page thereof, to which the defendants (except the Va. Mid. R. W. Co.,) objected, but the objection was overruled and the said defendants excepted at the time, and said title page is in the words and figures following to wit:

"Thirty-ninth annual report of the board of directors of the Pennsylvania Railroad Company to the stockholders. Presented at the meeting held March 9th, 1886."

And the same was read to the jury then and there, and also at the same time said counsel for the plaintiffs offered to read in evidence to the jury the list of officers and directors found on the second page of said report, but counsel for defendants interposed

and objected, but the objection was overruled, and counsel for the defendants duly excepted, which said list was then read to the jury and is in the words and figures following, to wit:

"Directors of the Pennsylvania Railroad Company for the year 1886–'87.

"George B. Roberts, Wistar Morris, Alexander M. Fox, Alexander Biddle, N. Parker Shortridge, D. B. Cummins, Henry D. Welsh, John Price Wetherill, William L. Elkins, William Thaw, H. H. Houston, A. J. Cassatt, C. A. Griscom, Edmund Smith, Frank Thomson, J. N. Du Barry, John P. Green.

245 "President, George B. Roberts; first vice-president, Edmund Smith; second vice-president, Frank Thomson; third vice-president, J. N. Du Barry; fourth vice-president, John P. Green; treasurer, John D. Taylor; general solicitor, John Scott; secretary, John C. Sims, Jr."

To which rulings of the court overruling the said objections and allowing the said words and list to be read in evidence, the said counsel for the said defendants then and there excepted at the several times thereof, which exceptions were duly noted upon the minutes of the court at the time, and the said counsel for the said defendants prayed the court to sign this their twenty-third bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, that by the permission of the court and consent of defendants' counsel, the plaintiffs were allowed to call several witnesses while the examination of the witnesses for the defendants was still progressing, among whom was one John W. Sumpter, who having given testimony to show that he was a clerk of the railroad commissioner of the State of Virginia, and who having answered that the reports of the railroads of the State of Virginia ought to be filed in his office, that the law required them to be filed there, but that not all of them were on file, "that is, the original reports of the railroad companies to the commissioner." He also further answered that he had looked in the office of the railroad commissioner for the reports of 1885, but could not find the report for 1885 on behalf of the Alexandria and Washington, and Alexandria and Fredericksburg railroads; that he had found other reports from these companies for 1884 and 1887, and none other.

246 Whereupon the last-named witness, Sumpter, stood aside, and James E. Goode was called by the plaintiffs, who testified that he was the contractor for the public printing for the State of Virginia, and was thereupon asked to look at a book and state whether it was printed by him as contractor for the State of Virginia, being entitled, "The report of the railroad commissioners of

the State of Virginia for the year 1885," and the witness was then asked the following question:

"From page 3 to 21 of this book purports to be some reports of railroad companies; I wish you would state what they were printed from."

To which question the counsel for all the defendants in both causes, except the Virginia Midland Railway Company, objected, whereupon the last-named question was withdrawn, and the witness was asked the following question by the plaintiffs:

"I want to ask you whether the book which has just been presented here was published by the same authority as the Code?"

Answer. "Yes, sir."

Prior to offering said reports as contained in the book purporting to be the printed report of the railroad commissioner of the State of Virgina, the plaintiffs, with the consent of the defendants' attorneys, gave in evidence the public laws of the said State in relation to railroad commissioner of said State and the laws in relation to reports required from railroad companies of said State, being sections 49, 50, 51, 52 and 54 of Code of Virginia, of 1873, prepared by Geo. W. Munford, and printed by Jas. E. Goode, and sections 1, 2, and 10 of chap. 554 of the Acts of the General Assembly of Virginia during the session of 1876 and 1877, and printed by said Goode; and it was agreed by the attorneys for the plaintiffs and defendants that the same contain the laws in force in Virginia
247 during the year 1885, and that said public laws as found in said book might be considered as in evidence and referred to as if formally proved. And, with like consent of counsel, the same are hereby made part of this bill of exceptions, and that they may be referred to and considered without being copied herein.

The plaintiffs' witness Sumpter also testified that as clerk in charge of the office of railroad commissioner of said State, he had custody and care of the reports of railroad companies made to the board of public works of said State, and that he had made thorough search for the original report for the year 1885, of the Alexandria and Washington and Alexandria and Fredericksburg Companies, and was unable to find them, and was satisfied they were not in said office, where they were required by law to be, and were usually kept; that the railroad commissioner was himself sick at the time witness was summoned to court to testify and produce said reports, and for that reason could not respond to the subpœna served upon him. And the witness Sumpter also identified the book containing said reports as the printed report of the railroad commissioner of said State for the year 1885.

The plaintiffs' witness James E. Goode also testified that the public printing for the State of Virginia is done by contract, and that for the last fifteen years or more he had been the contractor with the State for doing and had done all its public printing. That he printed the Code and other public laws in relation to railroad commissioner and reports of railroad companies as hereinbefore referred to, and also printed the book called the "Report of the Railroad Commissioner of Virginia," containing the reports of rail-

road companies from which said extracts were read, and that the said book was the report of the railroad commissioner for the year 1885, printed and published by him, and that the reports of the Alexandria and Washington and Alexandria and Fredericks-
248 burg Companies were printed by him from the original reports furnished him by the said railroad commissioner from his office. That he read the proof himself and compared the print with the original reports, and the said reports as contained in the book were accurate copies of the originals; that the originals purported to be signed by the officers of the companies the same as they appeared in the printed book.

The plaintiffs also introduced John S. Leib, who testified that he is the treasurer of the Alexandria and Washington, Alexandria and Fredericksburg, and Baltimore and Potomac Railroad Companies; that he signed, swore to, and forwarded reports to the board of public works at Virginia for the Alexandria and Washington, Alexandria and Fredericksburg for the year 1885, on blanks furnished by said board for that purpose; that such reports were true and correct, and that they were in substance the same as the reports contained in the said book, the report of the railroad commissioner aforesaid referred to in the evidence of the witness Goode, but he thought the tabulated statements had been changed in form and consolidated to some extent; that he is the same person who is mentioned in said reports as one of the directors of said companies, and that the said George B. Roberts, president of the Alexandria and Fredericksburg Company, is the same person who is president of the Pennsylvania Railroad Company.

The witness Wilkins also testified in response to questions of plaintiffs' attorneys on cross-examination that he knew reports were made on behalf of the Alexandria and Washington and Alexandria and Fredericksburg to the board of public works of Virginia for the year 1885, and that he is the same George C. Wilkins mentioned as one of the directors of said two companies.

249 Whereupon the counsel for the plaintiffs offered in evidence so much of the said book "as contains or purports to contain the report of the Alexandria and Washington Railroad Company and of the Alexandria and Fredericksburg Railway Company, made and published in accordance with these laws, as are found in the appendix to the commissioner's report in this book, which is called 'The ninth annual report of the railroad commissioner of the State of Virginia,' which book contains between said pages (inclusive) what purports to be said reports of said companies, which were in the words and figures following, to wit:

A. & W. R. R. Co.

To the board of public works of the State of Virginia:

The annexed report has been prepared in obedience to the "resolutions in relation to the form of annual reports of railroad and other companies," adopted March 15, 1856, by the General Assembly of Virginia.

J. P. KERR, *Secretary.*

STATE OF MARYLAND, *Baltimore City,* } ss:

I, John S. Leib, treasurer, and I, H. H. Carter, acting superintendent of operations of the Alexandria and Washington Railroad Company, each for himself, deposes and says that the statements in the annexed report, which has been signed by each of us at the end thereof, are true and correct, according to the best of his knowledge and belief.

JOHN S. LEIB, *Treasurer.*
H. H. CARTER,
Superintendent.

250 Subscribed and sworn to before me, this 11th day of November, 1885, as to John S. Leib, treasurer.

GEO. McCAFFRAY,
Justice of the Peace.

STATE OF DELAWARE, *New Castle County,* } ss:

Sworn to and subscribed before me, this 12th day of November, A. D. 1885, as to H. H. Carter, superintendent.

WILLIAM H. LEE,
Notary Public.

TABLE A.

Stocks and Debts.

Amount of capital stock, as by charter	$300,000
Amount of capital stock subscribed by others than the State, as by last report	300,000
Amount of capital stock now subscribed by others than the State	300,000
Amount of capital stock paid in by others than the State, as by last report	300,000
Total amount of capital stock now actually subscribed	300,000
Total amount of capital stock now actually paid in	300,000

Classes of Stock.

Number of shares	3,000
Character	Common
Par value	$100
Cash realized	300,000

251 TABLE B.

Cost of Construction and Equipment.

	By last report.	By this report.
Total cost of road and equipment	$300,000 00	$300,000 00

TABLE C.

Characteristics.

Length of the main line of road between the termini—*i. e.* from south end of Long bridge to Alexandria	3.96 miles.
Length of road laid	4.96 miles.
Length of double track laid	3.63 miles.
Length of branches laid	1.07 miles.
Weight of rail per yd. on main track	60 lbs.

Gradients, Alignment, and Elevation.

The sum of the ascents (going south) is	89.72 ft.
The sum of the ascents (going in the opposite direction) is	65.28 ft.
The whole ascent and descent overcome is	155.00 ft.
Which is an average per mile of	30.87 ft.
The maximum grade (going south) is per mile	73.39 ft.
For	0.40 miles.
The maximum grade (going in opposite direction) is, per mile	52.80 ft.
For	0.44 miles.
The sum of the straight line is	4.28 miles.
The sum of the curved lines is	.74 miles.
252 The whole number of degrees of curvature is	70.98 degrees.
The average degrees of curvature per mile of the curved part of the road is	95.92 degrees.
The average degrees of curvature per mile of the whole road is	14.13 degrees.
The maximum radius on the main line is	34,377 ft.
The minimum radius on the main line is	15.28 ft.
For	.038 miles.

TABLE D.

Doings of the Year in Transportation and Total Miles Run.

Number of miles run by passenger trains	25,499
Number of miles run by freight trains	6,485
Number of passengers (all classes) carried in cars	613,504
Number of miles traveled by passengers, or number of passengers carried one mile	2,048,830
Number of tons (2,000 pounds) of freight carried in cars	274,993
Total movement of freight, or number of tons carried one mile	858,538
Average rate of express trains, including stops	26
Average rate of speed adopted by freight trains, including stops	10

253 *Character and Amount of Freight, Specifying the Quantity.*

	Northward.	Southward.	Total.
	Pounds.	*Pounds.*	*Pounds.*
Pig-iron	3,464,369	513,052	3,977,418
Coal	1,969,285	42,204,396	44,173,681
Salt	7,290	323,285	330,575
Leaf tobacco	9,326,037	263,645	9,589,682
Tobacco stems	621,078	9,060	630,138
Manufactured tobacco	5,903,920	247,906	6,151,826
Cotton	4,168,696	15,936	4,184,632
Wheat	8,606,311	1,063,707	9,670,018
Corn	1,063,181	5,998,585	7,061,766
Oats	1,344,997	1,738,735	3,083,732
Rye	1,410	204,688	206,098
Flax seed	53,540	.....	53,540
Bacon	147,688	1,878,587	2,026,275
Butter	28,937	258,356	287,293
Eggs	247,062	42,280	289,342
Dried fruit	703,220	10,610	713,830
Hay	1,358,951	5,290,615	6,649,566
Shucks	10,045	.....	10,045
Sumac	4,167,162	226,540	4,393,702
Wool	2,930,135	88,440	3,018,575
Tallow	310,076	110,470	420,546
Cattle	54,997,000	1,671,600	56,668,600
Horses and mules	961,500	336,500	1,298,000
Hogs	1,411,000	130,000	1,541,000
Lambs	165,000	.....	165,000
Sheep	5,870,900	50,000	5,920,900
Wood	44,203,500	94,800	44,298,300
Bark	4,169,978	251,275	4,421,253
Lumber	75,437,293	2,403,001	77,840,294
Flour	2,968,844	10,334,692	13,303,536
Whiskey	750,580	1,985,267	2,735,847
Cement	.....	168,170	168,170
Lime	2,800	134,424	137,224
Miscellaneous articles	69,948,864	164,618,462	234,567,326
Total tonnage of all classes of freight	307,320,646	242,667,084	549,987,730

Rate of Fare for Passengers Charged for the Respective Classes per Mile.

Average rate of fare charged for all classes ..... 1.318 cents.

254 *Rate per Ton per Mile Charged for all Classes of Freight.*

Average rate per ton per mile charged on all classes of freight ..... 1.501 cents.

TABLE E.

Expenses of Maintaining Roadway and Real Estate.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight. tran-porta-tion.
Repairs of road-bed & railway	$6,077 00	$4,557 75	$1,519 25
Cost of iron & steel used in repairs	496 47	372 35	124 12
Repairs of buildings	109 03	102 76	6 27
Taxes on real estate	1,580 29	1,185 22	395 07
Totals	$8,262 79	$6,218 08	$2,044 71

TABLE F.

Cost of Repairs of Machinery.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight tran-porta-tion.
Repairs of engines and tenders	$1,803 74	$1,454 77	$348 97
Repairs of tools & machinery in shops	54 05	40 54	13 51
Oil, fuel, clerks, and watchmen about works-hops	1,441 61	1,081 21	360 40
Totals	$3,299 40	$2,576 52	$722 88

255

TABLE G.

Cost of Operating the Road.

	Amount.	Allotted to passenger transporta-tion.	Allotted to freight transporta-tion.
Office expenses, stationery, etc	$2,525 59	$1,894 19	$631 40
Agents	1,001 16	724 44	276 72
Clerks	1,660 61	615 73	1,044 88
Labor, loading and unloading freight	236 81	.....	236 81
Porter and watchmen	840 20	801 96	38 24
Switch-tenders	1,084 13	818 50	265 63
Conductors and baggagemen	2,391 67	2,110 21	281 46
Brakemen	840 64	371 75	468 89
Enginemen and firemen	1,837 80	1,373 27	464 53
Fuel used—wood	24 08	19 11	4 97
Fuel used—coal	2,960 28	2,205 20	755 08
Oil, waste and tallow used—			
For engines and tenders	138 57	104 07	34 50
For passenger, mail and baggage cars	102 56	102 56	
For freight cars	35 74	.....	35 74
Loss and damage of goods and baggage	1 05	.....	1 05
For salaries of president, directors, secretary, treasurer, and superintendent	132 82	104 09	34 73
For law expenses	645 69	484 27	161 42
Other expenses and contingencies	8,180 78	6,135 58	2,045 20
Totals	$24,646 18	$17,864 93	$6,781 25

Recapitulation of Expenses.

	Amount.	Allotted to passenger tran-porta. tion.	Allotted to freight tran-porta-tion.
Maintaining roadway & real estate	$8,262 79	$6,218 08	$2,044 71
Repairs of machinery	3,299 40	2,576 52	722 88
Operating	24,646 18	17,864 93	6,781 25
Totals	$36,208 37	$26,659 53	$9,548 84

256 TABLE H.

Earnings, Receipts, and Payments.

Earnings—	
From passengers	$27,013 80
From freight	12,884 59
From mails	2,352 78
From all other sources	2,853 74
Total earnings	$45,104 91

Payments and Liabilities other than for Construction.

For passenger business	$26,659 53
" freight business	9,548 84
Total expenses	$36,208 37
Total amount of surplus fund	$8,896 54

TABLE I.

Accidents, the Number of Persons in Life or Limb, and the Cause of the Injury, and whether Passengers or Persons Employed.

	Employees killed.	Employees injured.	Others killed.	Others injured.
Fell or were thrown from the cars	.....	1	.....	.....
Collision of trains	3	1	1	7
Total for each class of persons	3	2	1	7

Total number of persons killed..... 4
Total number of persons injured, but not killed..... 9

257 On February 19, 1885, Virginia Midland passenger train, No. 104, and Alexandria and Fredericksburg freight train, No. 205, collided at Four-mile Run arch, on the A. & W. R. R., killing and injuring the following persons:

Killed.

A. & F. freight train 205, Andrew J. Augur, conductor; George Frere, engineman; Thomas Maloney, fireman; V. M. passenger train 104, T. J. Darley, fireman.

Injured.

A. & F. freight train 205, George E. Miller, brakeman (died); William Culligan (not an employee); V. M. passenger train 104; J. T. Bruce, engineman; J. W. Jones, postal clerk; O. T. Stewart, postal clerk; W. B. McNeil, postal clerk; J. Taylor, postal clerk; J. T. Franey, postal clerk, colored (died); J. W. Savage, telegraph operator, A. & W. R. R., fell from the rear platform of the last car in train 122, at south end of Long bridge, July 14, 1885, breaking his right thigh bone and badly bruising his ankle.

Gross Earnings, etc.

The gross earnings were	$45,104 91
The expenses	36,208 37
The net revenue	$8,896 54

258 *How Distributed.*

	Gross earnings.	Expenses.	Net revenue.
First and second class passengers	$27,013 80	$26,659 53	.....
First, 2d, 3d, & 4th class freight	1,884 59	9,548 84	.....
Express freight	2,349 54	.....	.....
Mail *	2,352 78	.....	.....
Miscellaneous	79 31	.....	.....
Miscellaneous passengers	424 89	.....	.....
Totals	$45,104 91	$36,208 37	$8,896 54

* Expenses included in passenger expenses.

Officers of the Company.

Directors, Andrew Jamison, John S. Leib, B. F. Newcomer, George C. Wilkins, Jas. P. Kerr.

President, J. N. Du Barry; treasurer, J. S. Leib; secretary, J. P. Kerr; assistant engineer, A. E. Reed; superintendent, H. H. Carter.

The principal office and address of the company is at Baltimore, Md.

The undersigned have caused the foregoing statements to be prepared by the proper officers and agents of this company from the books and records, and have examined them as far as was practicable, and believe them to be correct.

JOHN S. LEIB,
Treasurer.
H. H. CARTER,
Superintendent.

259 A. & F. Railway Co.

To the board of public works of the State of Virginia:

The annexed report has been prepared in obedience to the "resolutions in relation to the form of annual reports of railroad and other companies," adopted March 15, 1856, by the General Assembly of Virginia.

ALBERT HOWSON, *Secretary.*

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

I, G. B. Roberts, president of the Alexandria and Fredericksburg Railway Company, and I, H. F. Kenney, general superintendent of operations of the Alexandria and Fredericksburg railway, each for himself deposes and says that the statements in the annexed report, which has been signed by each of us at the end thereof, are true and correct, according to the best of his knowledge and belief.

G. B. ROBERTS,
President.
H. F. KENNEY,
Gen'l Superintendent.

Subscribed and sworn to before me this 21st day of November, 1885.

AL. P. BURCHELL,
Notary Public.

TABLE A.

Stocks and Debts.

Amount of capital stock as by charter	$2,000,000
Amount of capital stock subscribed by others than the State, as by last report	1,000,000
260 Amount of capital stock now subscribed by others than the State	1,000,000
Amount of capital stock paid in by others than the State, as by last report	1,000,000
Amount of capital stock now paid in by others than the State	1,000,000
Total amount of capital stock now actually subscribed	1,000,000
Total amount of capital stock now actually paid in	1,000,000

Classes of Stock.

	No. 1.
Number of shares	10,000
Character	Common.
Par value	$100

Notes of Explanation.

Class No. 1.—Common and only stock issued by the company.
The funded debt due to others than the State by last report..... $1,000,000
The funded debt now due to others than the State..... 1,000,000
The average rate per annum of interest on funded debt now due to others.....7 p. ct. gold.

Classes of Bonded or Funded Debt.

	Number.
Amount	$1,000,000
Date of issue	June 1, 1866.
Date of payment	June 1, 1896.
Annual rate of interest	7 p. c. gold.
Interest—when payable	1st June and Dec.
Amount realized, viz:	
In cash	1,000,000
Nature and character of security	1st mortgage,

261 *Notes of Explanation.*

Class No. 1.—Only bonds issued by the company and constitute a first lien upon its roadway, equipment and appurtenances from south end of Long bridge, over the Potomac river, at the city of Washington, to the city of Fredericksburg.

Floating Debt.

The floating debt, as per last report..... $174,756 70
The amount now of floating debt..... 159,108 60

TABLE B.

Cost of Construction and Equipment.

	By last report.
For graduation and masonry	$993,241 63
For bridges	184,989 16
For superstructure, including iron	554,248 26
For passenger and freight stations, buildings and fixtures	28,896 77
For engine and car houses, machine shops, machinery and fixtures	
For land, land damages and fences	155,556 62
For locomotives and fixtures and snow plows	121,632 72
For passenger and baggage cars	
For freight and other cars	
For engineering and other agencies	124,309 42
	2,372 48
Total cost of road and equipment	$2,165,247 06

262 TABLE C.

Characteristics.

Length of the main line of road between the termini—that is, from St. Asaph junction to Fredericksburg	47.37	miles.
Length of road laid	28.77	miles.
Weight of rail per yd. on main track	56 & 60	lbs.
Number of engine-houses and shops	1	
Number of engines	4	
Number of first-class passenger cars rated as eight-wheel cars	4	
Number of second-class cars	3	
Number of baggage, mail and express cars	2	
Number of freight cars	21	

Gradients, Alignments, and Elevations.

The sum of the ascents (going south) is	400.88	feet.
The sum of the ascents (going in the opposite direction) is	427.45	feet.
The whole ascent and descent overcome is	828.33	feet.
Which is an average per mile of	28.79	feet.
The maximum grade (going —) is, per mile, 52.80 feet, for	3.11	miles.
The maximum grade (going in the opposite direction) is, per mile, 52.80 feet, for	1.06	miles.
The sum of the straight line is	20.57	miles.
The sum of the curved lines is	8.20	miles.
The whole number of degrees of curvature is	1,387.9	deg.
The average degrees of curvature per mile of the curved part of the road is	169.25	deg.
263 The average degrees of curvature per mile of the whole road is	48.24	deg.
The maximum radius on the main line is	22.918	feet.
The minimum radius on the main line, is 410 feet, for	.037	miles.

TABLE D.

Doings of the Year in Transportation and Total Miles Run.

Number of miles run by passenger trains	76,533
Number of miles run by freight trains	43,133
Number of passengers (all classes) carried in cars	467,863
Number of miles traveled by passengers, or number of passengers carried one mile	4,036,998
Number of tons (2,000 *tons*) of freight carried in cars	254,780
Total movement of freight, or number of tons carried one mile	3,609,085
Average rate of express trains (including stops) miles per hour	26
Average rate of speed adopted by freight trains, including stops	10

264 *Character and Amount of Freight, Specifying the Quantity.*

	Northward.	Southward.	Total.
	Pounds.	*Pounds.*	*Pounds.*
Pig	3,376,284	785,701	4,161,985
Coal	1,976,005	43,411,406	45,387,411
Salt	7,290	325,065	332,355
Leaf tobacco	9,332,705	330,737	9,663,442
Tobacco stems	589,418	9,560	598,978
Manufactured tobacco	5,943,549	237,912	6,181,461
Cotton	4,168,696	15,776	4,184,472
Wheat	1,876,890	7,981,837	9,858,727
Corn	900,053	6,237,344	7,137,399
Oats	1,343,405	1,750,398	3,093,803
Rye	10,452	204,688	215,140
Flax seed	53,540	.....	53,540
Bacon	148,320	1,962,414	2,110,734
Butter	28,967	276,705	305,672
Eggs	247,398	43,350	290,748
Dried fruit	702,843	10,630	713,473
Hay	651,461	5,298,954	5,950,415
Shucks	34,685	.....	34,685
Sumac	4,714,515	259,559	4,974,074
Wool	3,051,161	97,118	3,148,279
Tallow	310,877	133,077	443,954
Cattle	17,961,000	592,120	18,553,100
Horses and mules	856,800	340,500	1,197,300
Hogs	195,000	130,000	325,000
Lambs	101,000	2,000	103,000
Sheep	2,767,900	28,000	2,795,900
Wood	44,478,600	1,208,800	45,687,400
Bark	4,693,753	377,275	5,071,028
Lumber	75,574,093	2,084,777	77,658,870
Flour	3,065,702	10,051,329	13,117,031
Whiskey	796,570	2,710,818	3,507,388
Cement	.....	168,170	168,170
Lime	9,900	655,914	665,814
Tar	71,884,924	159,986,015	231,870,939
Total tonnage of all classes	261,853,758	247,707,929	509,561,687

Rate of Fare for Passengers Charged for the Respective Classes per Mile.

Average rates of fare charged for all classes..... 1.894 cents.

265 *Rate per Ton per Mile Charged for All Classes of Freight.*

Average rate per ton per mile charged on all classes of freight..... 1.258 cents.

TABLE E.

Expenses of Maintaining Roadway and Real Estate.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight tran-porta-tion.
Repairs of road-bed and railway	$41,898 56	$25,139 14	$16,759 42
Cost of iron and steel used in repairs	3,509 30	2,105 58	1,403 72
Repairs of buildings	1,132 32	973 17	159 15
Taxes on real estate	5,848 50	3,509 10	2,339 40
Totals	$52,388 68	$31,726 99	$20,661 69

TABLE F.

Cost of Repairs of Machinery.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight tran-porta-tion.
Repairs of engines and tenders	$3,452 68	$1,366 88	$2,085 80
Repairs of passenger, mail and baggage cars	6,099 60	6,099 60	
Repairs of freight cars	965 70	.....	965 70
Repairs of tools and machinery in shops	235 14	141 08	94 06
Oil, fuel, clerks, and watchmen about work-shops	5,716 68	3,430 00	2,286 68
Totals	$16,469 80	$11,037 56	$5,432 24

266 TABLE G.

Cost of Operating the Road.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight tran-porta-tion.
Office expenses, stationery, etc.	$1,088 48	$653 09	$435 39
Agents	1,509 84	776 40	733 44
Clerks	2,698 10	1,444 60	1,253 50
Labor, loading and unloading freight	196 54	.....	196 54
Porter and watchmen	2,485 88	1,632 36	853 52
Switch-tender	7 94	4 70	3 24
Conductors and baggagemen	4,839 43	3,330 57	1,508 86
Brakemen	3,891 97	1,113 23	2,778 74
Enginemen and firemen	6,741 31	4,053 76	2,687 55
Fuel used—wood	79 54	57 40	22 14
coal	11,579 34	6,825 56	4,753 78
Oil, waste, and tallow used:			
For engines and tenders	524 03	307 32	216 71
For passenger, mail, and baggage cars	480 28	480 28	
For freight cars	221 83	.....	221 83
Loss and damage of goods and baggage	332 03	6 51	325 52
For salaries of president, directors, secretary, treasurer and superintendent	673 22	406 98	266 24
For law expenses	1,837 81	1,102 69	735 12
Other expenses and contingencies	16,002 03	9,601 22	6,400 81
Totals	$55,189 60	$31,796 67	$23,392 93

Recapitulation of Expenses.

	Amount.	Allotted to passenger tran-porta-tion.	Allotted to freight tran-porta-tion.
Maintaining roadway and real estate	52,388 68	31,726 79	20,661 69
Repairs of machinery	16,469 80	11,037 56	5,432 24
Operating	55,189 60	31,796 67	23,392 93
Totals	124,048 08	74,561 22	49,486 86

267 TABLE H.

Earnings, Receipts, and Payments.

Earnings:

From passengers	$76,479 70
From freight	45,407 62
From mail	16,644 92
From all other sources	9,322 62
Total earnings	$147,544 86

Payments and liabilities other than for construction:

For passenger business	$74,561 22
Freight business	49,486 86
Total expenses	$124,048 08
Balance liable for debt of the company	$23,806 78

TABLE I.

Accidents, the Number of Persons in Life or Limb, and the Cause of the Injury, and whether Passengers or Persons Employed.

	Employees injured.	Others injured.
Run over while walking or standing on track		1
At work or standing by trains	2	
Total of each class of persons	2	1

Total number of persons killed..... 1
Total number of persons injured, but not killed..... 2

268 John T. Robey, brakeman, had his left hand caught between the draw-heads while making a coupling at Alexandria, October 6, 1884, mashing the end of his second finger.

A colored maintenance-of-way laborer, in attempting to strike a tie to lift it up, his foot slipped and he struck Jacob Banks, also colored laborer, with his pick in the foot, at Accotink, on April 25, 1885, causing a painful, but not dangerous, wound.

Train No. 27, engine No. 352, struck and instantly killed a tramp named Bazara Nicholas, who was walking on the track three-quarters of a mile south of Alexandria, May 29, 1885.

Gross Earnings, &c.

The gross earnings, operating road	$147,854 86
The expenses, operating road	124,048 08
The net earnings liable for debt of company	23,806 78

Length of the Road Unfinished.

The length of the road unfinished is 18.60 miles.

How Distributed.

	Gross earnings.	Expenses.	Net revenue.
First and second class passengers	$76,479 70	$74,561 22	
1st, 2nd, 3rd, and 4th class freight	45,407 62	49,486 86	
Express freight	6,753 86		
Mail *	16,644 92		
	1,514 31		
	1,054 45		
Totals	$147,854 86	$124,048 08	$23,806 78

* Expenses included in passengers' expenses.

269 *Officers of the Company.*

Directors, J. N. Du Barry, Albert Hewson, John S. Leib, John P. Green, James P. Kerr, N. P. Shortridge, G. C. Wilkins; president, G. B. Roberts; treasurer and secretary, Albert Hewson; general superintendent, H. F. Kenney.

The principal office and address of the company is at 233 South Fourth street, Philadelphia, Penn.

The undersigned have caused the foregoing statements to be prepared by the proper officers and agents of this company, from the books and records, and have examined them as far as it was practicable, and believe them to be correct.

G. B. ROBERTS, *President.*
H. F. KENNEY,
General Superintendent.

To the admissibility as evidence of said portions of said book, the said counsel for the said defendants then and there objected, but said objection was overruled and said defendants duly excepted.

Whereupon the said witness was further asked whether he had ever seen the original of which this printed book purports to be a copy from pages 3 to 21 inclusive.

Answer. "Yes, sir. This book was printed from the originals as furnished by the railroad company."

Question. "Are you able to say that these pages contain an accurate copy from the original reports?"

Answer. "I think so."

Said witness then, on cross-examination, answered:

Question. "Do you know the signatures to be genuine to these papers which you had?"

Answer. "No, sir; I do not."

270 To the admission of the said book and the extracts and reports therefrom as evidence the said counsel for the said defendants again objected.

Whereupon the said Sumpter was recalled by the plaintiffs, who gave further testimony tending to show that a certain blank shown

the witness was the blank furnished by the commissioners to the different railroad companies.

Whereupon the counsel for the plaintiffs offered said portion of the said book and said reports in behalf of said companies, to the admission in evidence of which portions of said book and said reports in evidence the said counsel for the said defendants objected, which objection was by the court overruled, and the said parts of the said book were received and given in evidence and by the counsel of the plaintiffs read to the jury.

To which ruling of the court the said counsel for the said defendants then and there excepted, which exception was noted at the time upon the minutes of the court, and the said counsel for the said defendants prayed the court to sign and seal this, their twenty-fourth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled cause, after the signing and sealing of the foregoing bills of exceptions of the defendant, which are made part hereof, the witness George C. Wilkins on further cross-examination by plaintiffs' attorneys testified as follows, amongst other things:

That while he was receiver of the Alexandria and Washington Railroad Company he was also in the service of the Alexandria and Fredericksburg, Baltimore and Potomac, Philadelphia, Wilmington and Burlington and Northern Central Railroad Companies;
271 was superintendent of Alexandria and Washington road when appointed its receiver; that J. P. Kerr was at the time of the accident and all time witness was receiver, auditor of the Northern Central, Baltimore and Potomac, Alexandria and Washington and Alexandria and Fredericksburg railroads; J. S. Leib was treasurer of same, and H. H. Carter was superintendent of same and of Philadelphia, Wilmington and Burlington railroad; that the earnings of the Baltimore and Potomac, Alexandria and Fredericksburg and Alexandria and Washington went into the hands of a common treasurer, Leib, and by him paid out to the three companies in accordance with their respective interests; that as receiver he appointed Chas. E. Pugh, general manager of the Alexandria and Washington railroad, and James R. Wood the general ticket agent; that when he was appointed receiver he found in existence certain running arrangements amongst the Alexandria and Washington, Alexandria and Fredericksburg and Baltimore and Potomac railroads by which they prorated their expenses and earnings, and were operated by the same operating officers and agents, and he continued such arrangements, appointing the same officers and agents he found in control his own officers and agents as receivers; that H. F. Kenney was general superintendent when he was appointed as receiver and H. H. Carter was superintendent, and he appointed and continued them as such, and they at the same time held the same positions in Philadelphia, Wilmington and Baltimore, Northern Central, Baltimore and Potomac, Alexandria and

Fredericksburg railroads; that during his receivership Kenney directed and was generally responsible for all transportation operations on the Alexandria and Washington road; and Carter was the man in direct charge of the transportation operations on said road; that Carter resided in Wilmington, and all the other officers and agents above named resided in Philadelphia and Baltimore; that as receiver he attended to correspondence and receiving reports; his office and residence
272 was in Baltimore; Pugh and Wood were also connected with the Pennsylvania Railroad Company as general manager and general ticket agent, respectively; that the Alexandria and Washington road while he was receiver had no rolling stock, conductors or enginemen or other train employees; that he was the receiver to take charge of the road and its operations and report the results to the U. S. court, by whom he was appointed; that he made arrangements with his auditor to receive his share of the money for sale of tickets over the Alexandria and Washington road; that he neither sold nor issued any tickets as receiver, and none were issued by the Alexandria and Washington Railroad Company while he was receiver, but tickets were issued over said road by direction of his general ticket agent in the name of the Alexandria and Fredericksburg Company, but under the arrangement in existence when he became receiver and while he continued, he received from the common treasurer of the three roads his share of the money arising from sale of tickets over the Alexandria and Washington road; that the Alexandria and Washington road had no rolling stock in 1875, when he first became connected with it, and never had after that time; that the trains of the Alexandria and Fredericksburg, Baltimore and Potomac and Virginia Midland railroad trains ran over the tracks of the Alexandria and Washington road while he was receiver; that the train on the schedule called Alexandria and Washington accommodation was a train running from Alexandria to Washington by the Alexandria and Fredericksburg organization, and in doing it used the tracks of three different companies, the Baltimore and Potomac from 6th-street depot to south end of Long bridge; the Alexandria and Washington from there to St. Asaph's junction, and the Alexandria and Fredericksburg from there to Alexandria; that that train carried passengers and baggage; that he is not certain which company, the Baltimore and Potomac or the Alexandria and Fredericks-
273 burg furnished the motive power to run the local trains over the Alexandria and Washington road while he was receiver, but one of them did; and was not certain whether Baltimore and Potomac or Alexandria and Fredericksburg conductors ran on those trains, but his impression was the latter; that the sum paid by the Virginia Midland Railroad Company for the privilege of running its trains (passenger) over the Alexandria and Washington road was paid by it directly into the hands of John S. Leib, local treasurer, who was also treasurer of the Baltimore and Potomac Railroad Company and his treasurer as receiver, and Leib divided it up and paid it out according to the accounts made up by the auditor; that he did not

know who made the arrangement by which the Virginia Midland trains ran over said road and paid the money into the hands of Leib; that he found the arrangement in vogue when he took charge as receiver; that the general freight agent of the Pennsylvania Railroad Company made demand upon him as receiver for reimbursement for freight which he claimed was destroyed in the collision and the last-named company had paid for; that the bills presented for loss of freight by the said general freight agent of the Pennsylvania Railroad Company referred to in his answer to the petition of the Virginia Midland Railroad Company in case of Hay *v.* Alexandria and Washington Railroad Company, and given in evidence in this case, were for the freight on the freight train which collided with the passenger train on the 19th day of February, 1885; that those bills are the ones referred to in the paragraph of his answer mentioned in the evidence; that he does not know into whose hands the money went in the first instance for local tickets sold for passage between Washington and Alexandria; that as receiver he received a proportion of the money for all tickets sold over the Alexandria and Washington road; that that share was not exactly in proportion to the mileage of each road; that
274 the Baltimore and Potomac Railroad Company was allowed for the use of the station at 6th street and for Long bridge, which would make the proportion of the Baltimore and Potomac Railroad Company at little more than absolute mileage; that he knew from the general ticket agent what the rates were; that he received in the same manner and from the same person as he did the ticket money the Alexandria and Washington Railroad Company's share of money received from freights; that the tickets over the Alexandria and Washington road sold in Washington were sold at the Baltimore and Potomac depot, and they were sold from the same office other tickets were over other roads; the tickets sold in Alexandria were sold at the office of the Alexandria and Fredericksburg Railroad Company; that he knew, during the time he was receiver, that the law of Virginia required a report, similar to the one given in evidence, to be made by the railroad companies of the State to the board of public works; and when he was superintendent of the road, which was before he was receiver, he made such reports annually, and received the printed report of the railroad commissioner of the State annually; that he was an officer of the Pennsylvania Railroad Company from March, 1867, to November 18th, 1873; that the office or position he held under said last-named company was superintendent of the Bald Eagle Valley and the Tyrone and Cellarfield railroad; that when he was appointed superintendent of the Alexandria and Fredericksburg railroad the Alexandria and Washington railroad was operated as a part of the Alexandria and Fredericksburg railroad; that when he ceased to be receiver he passed the possession of the Alexandria and Washington railroad into the hands of Chas. E. Pugh, but that he didn't know for whom; that no tickets were issued on the Alexandria and Fredericksburg railroad in the names of the trustees, and the only evidence that the public had that the

road was run by trustees was that the accounts, books, and vouchers were in their names, and that the payments were made by their vouchers and checks.

275 Q. Do I understand you to say that during your receivership the Alexandria & Fredericksburg operated the Alexandria & Washington?

A. No, sir; they did not.

Q. Who did operate the Alexandria & Washington during your receivership?

A. I operated it.

Q. Through what organization?

A. Through my own organization.

Q. It was operated as one interest, was it not?

A. No, sir; it was operated during my receivership as an entirely independent piece of property.

Q. Was it operated or not as one interest?

A. What do you mean by one interest?

Q. Was it operated as a joint interest or as a single interest?

A. As a single interest.

Q. And operated by what organization?

A. By my organization as receiver.

Q. Through the instrumentality of what other road, if any?

A. Through no other road, sir, with but one exception; that the accounting was done through the organization of the trustees of the Alexandria & Fredericksburg.

Q. I understand you to say that you had no rolling stock at all as receiver of the Alexandria & Washington?

A. I had none, sir.

Q. How could you operate a railroad without rolling stock?

A. The general term of operating a railroad—I conducted its operation, and I could have employed rolling stock if I had desired.

Q. Did you do it?

A. I did not.

Q. But the road was operated, was it not?

A. Yes, sir.

Q. Will you please answer my question and state through whom it was operated?

A. It is operated through no one.

276 Q. By whom was it operated?

A. By me as receiver.

Q. Whose rolling stock did you use?

A. I did not use any one's rolling stock.

Q. Then the road was not operated, was it?

A. It was.

Q. Will you please explain to the jury how it was operated without rolling stock, and that you used no rolling stock?

A. Certainly, with pleasure; because other railroads had a right to run their trains over my track.

Q. To run over your track; who ran over your track?

A. Other railroad companies

Q. Then the other railroads operated your track?

A. No, sir; they did not operate them. They ran over them. The trains of other railroad companies ran over them.

Q. Under whose authority?

A. Under the authority of my office as receiver.

Q. And under whose control?

A. Under the control of Mr. H. H. Carter, superintendent, Mr. Kenney, general superintendent, and Mr. Charles E. Pugh, general manager.

Q. And all the trains that ran there ran under the control of these men?

A. They did, sir.

Q. Will you tell us what were the rights of the Alexandria & Fredericksburg train passing over the tracks of the Alexandria and Washington road during your receivership.

A. They were governed by the time-tables and rules.

Q. I asked you what their rights were, not what their government was.

A. The company had an arrangement whereby they ran trains from the Baltimore & Potomac premises in Washington to Quantico, Va.

Q. Will you please state what that arrangement was?

A. I cannot give you that arrangement.

Q. You cannot?

277 A. No, sir.

Q. You were the receiver of the railroad who made the arrangements?

A. No, sir; as receiver I continued the existing arrangements.

Q. You do not know what that arrangement was?

A. I do not know what that arrangement was; and I do. If you will put the question in a little different shape I think I can answer it.

Q. I ask you if you know what the arrangement was, and if you do know, you will please state it.

A. Yes, sir; I know that they had an arrangement whereby they ran their trains from the city of Washington to Quantico, Va.

Q. What was the arrangement?

A. The arrangement was that the net earnings of their trains should be prorated between the respective companies in interest, and all expenses were prorated substantially in the same manner.

Q. In your testimony given in the case of Alexander Hay against the Alexandria & Washington Railway Company, depending in the circuit court for the eastern district of Virginia, in answer to a question which is propounded to you, you are reported to have made the following answer: "Q. After that period what right had the Alexandria & F. railway in the relation to passing over the tracks of the A. & W. railroad? A. Well, the rights of the A. & F. railway are somewhat difficult to define, because there has never been any written contract between the respective interests. The B. & P., the A. & W. and the A. & F. roads have a community of interests south of Washington, which make it both economical and

desirable to operate as one interest, although an accurate subdivision of both earnings and expenses have at all times been made upon the books of the auditor and treasurer." Is that correct?

A. It is, sir.

Q. That is correct?

A. Yes, sir.

278 Q. I understood you to say, a few moments ago, in answer to a question, that this railroad was not conducted through the organization of the Alexandria & Fredericksburg.

A. I said with one exception; that is, the auditing department. The treasury of Alexandria and Washington railroads, since my knowledge of it, which extends back to 1875, has always been operated, as far as the accounting was concerned, through the organization of the trustees of the Alexandria & Fredericksburg railway. I continued that arrangement when I was appointed receiver.

Q. Then I understand that it only referred to the auditing or accounting department.

A. Yes, sir.

Q. On page 180 of your testimony you are reported to have said: "I should explain, however, that the operations of the Alexandria & Washington road are conducted through the organization of the A. & F. Company, as I regarded that the best and most economical method of managing that property." Is that correct or not?

A. Read the whole of the answer. Won't you be good enough to go back and read the preceding question?

By Mr. KENT:

"Q. In managing the Alexandria & Washington road did you do it direct or through agents—I mean within the last year or two?

"A. As receiver I operated the road through my organization.

"Q. What is the organization you used? Give me, as far as you can, the name of the officials you conduct the business through.

"A. The transportation department is in charge of Charles E. Pugh, general manager; the auditing department is in charge of James P. Kerr, auditor; and the treasury department is in charge of John F. Leib, local treasurer. I should explain, however, that the operations of the A. & W. road are conducted through

279 the organization of the Alexandria & Fredericksburg Company, as I regard it the best and most economical method of managing that property." Is that correct?

A. It is.

Q. Mr. Wilkins, you knew Mr. Joseph K. Sharp, did you not, during his life?

A. Very well, sir.

Q. Can you state whether or not Mr. Joseph K. Sharp was one of the agencies through which the Alexandria & Washington Railroad Company was operated?

A. Yes, sir; he was a subordinate officer to Mr. H. H. Carter, superintendent.

Q. Who was the train-dispatcher over that line of roads between Alexandria and Washington?

A. I don't know, sir.

Q. Do you not know that Joseph K. Sharp was the train-dispatcher of that road?

A. No, sir; I know that he was the train master. The train-dispatcher is a very different officer.

Q. You do not know who was train-dispatcher?

A. I do not.

Q. Then I understand you to say that you don't know who run these trains over that road?

A. Yes, sir; I do.

Q. Who?

A. Mr. H. H. Carter, superintendent.

Q. Who was the man, who was the dispatcher at that time?

A. The train-dispatcher?

Q. Yes, sir.

A. No, sir; I do not know.

Q. Do you know in whose employ Mr. Sharp was?

A. Yes, sir.

Q. Whose?

A. He was employed by the Baltimore & Potomac railroad and also by the A. & W.; that is to say, the Alexandria & Fredericksburg and the Alexandria & Washington paid him a portion of his salary.

Q. You produced here the pay-rolls of the Alexandria &
280 Fredericksburg railroad for the months of January and February, 1885, before the jury. Was Mr. Sharp's name on that pay-roll?

A. It was.

Q. On the pay-roll of the Alexandria & Fredericksburg?

A. It was not; at least my recollection is that it was not. I think it was on the Baltimore & Potomac.

Q. I asked you about the Alexandria & Fredericksburg.

A. My impression is that it was not; but I am not confident. If you will show me the rolls I will testify about them.

Q. Was Mr. Sharp's name on the pay-roll of the Baltimore & Potomac Company for the months of January and February, 1885?

A. It was.

Q. Were there any pay-rolls to the Alexandria & Washington?

A. There were not.

Q. Then, he was not on the pay-roll of the Alexandria & Washington?

A. No, sir.

Q. The only pay-roll, then, so far as you know, that Mr. Sharp's name appeared on, was on the Baltimore & Potomac roll?

A. That is my recollection, from looking at the pay-rolls in this court-room.

Q. On page 181 you are reported to have been asked the following questions:

"Q. Is there a Mr. Sharp in your employment?

"A. There is.

"Q. In your employment as receiver?

"A. Yes, sir.
"Q. What is his first name and where does he reside?
"A. James K. Sharp, Washington.
"Q. Where is his office in Washington?
"A. In the Baltimore & Potomac Railroad Company building in Washington.
"Q. And what are his duties?
"A. Train master."

281 Q. Refreshing your memory from that testimony, I wish to know if you can say whether or not Mr. Sharp was train master.

A. I have said so before, without any reference to this.

Q. In your employment?

A. I believe that he was when I gave this testimony. He was certain subordinate to my superintendent, and I paid a portion of his wages.

Q. What do you think of it now?

A. I am not posted on the technical point whether the fact of his name being on the Baltimore & Potomac pay-roll made him absolutely a Baltimore & Potomac employee. I know that I paid a portion of his wages monthly.

By Mr. TOTTEN:

Q. As receiver?
A. Yes, sir.

By Mr. KENT:

Q. To whom did you pay it?
A. To the Baltimore & Potomac Railway Company.
Q. You did not pay it to Mr. Sharp?
A. I did not.
Q. You paid it to the Baltimore & Potomac road?
A. Yes, sir.

Q. I would like to ask you, now, whether there has always been a pilot, so far as you know, upon the trains of the Virginia Midland Railway Company running between Alexandria and Washington, since there has been any arrangement?

A. There has been, to the best of my knowledge, since I was appointed superintendent in January, 1875, up to the close of my receivership. After that date, I know nothing about it.

Q. I understood you to say yesterday that the functions and duties of the pilot were those of a conductor with respect to the movement of the train; am I correct?

282 A. You are right, sir.

Q. Then the instructions upon the time-table which were furnished for the running of trains between Alexandria and Washington applicable to conductors, were also applicable to pilots, was it?

A. It was—I ought probably to correct that answer.

Mr. TOTTEN: Well, correct it.

A. When the pilot was acting as conductor—of course the pilot

may be acting as conductor or as engineman—when he was acting as conductor, of course, his duties were those of a conductor.

By Mr. TOTTEN:

Q. Is there any such thing as a pilot on an engine? I mean a man, not a cow-catcher.

A. No, sir; I don't mean a cow-catcher, either.

Q. When you speak about a pilot, you mean somebody to go with the engineer and to show him the road?

A. Yes, sir; it is customary when a strange engineer comes on any division of a road to put a pilot on with him.

By Mr. KENT:

Q. Now, Mr. Wilkins, I would ask you whether or not, within your knowledge of the agreement or arrangement for running trains by the Virginia Midland Railway Company over the track between Alexandria and Washington, was it possible for the Virginia Midland officers, in accordance with the understanding between you and them for the running of trains, to have moved their trains out of their Duke-street depot in Alexandria without this pilot?

A. Do you mean by the Virginia Midland officials, the officers of that road?

Q. Yes, sir.

283 A. No, sir; they had no authority between Alexandria and Washington.

Q. Then, I understand you, that the Virginia Midland trains end at Duke street, in the city of Alexandria, and is moved forward to Washington only under the authority derived from the Alexandria & Washington Company and under the control of a pilot?

A. No, sir; the Virginia Midland train does not end at Alexandria. It runs through to Washington. I say that the train does not cease at Alexandria but it runs through to Washington. The jurisdiction of the officers of the Virginia Midland railway over that train ceased at Alexandria.

Q. Then, as I understand you, that train was running from Alexandria to Washington under the authority and control of the proper officer of the Alexandria & Washington railroad when the Virginia Midland train is on the A. & W. tracks?

A. Yes, sir.

Q. And under the authority and control, you stated, of the proper officers of the Baltimore & Potomac Company when the trains are upon the track of that company; is that so?

A. That is so.

Q. Now, I wish to know, whether or not on one train you had more than one pilot from Alexandria to the B-street depot in Washington.

A. I believe there was a pilot on every Virginia Midland train.

Q. But only one furnished by you for the same train?

A. Yes, sir; that is right.

Q. You did not change the pilot at the south end of the Long bridge?

A. Oh, no; he ran through, because there was the same superintendent in charge of both roads, so he was under the same jurisdiction.

Q. He was the same man, and performed the same duties?

284 A. I presume he was the same man, and performed the same duties.

Q. But he was upon a different road as soon as he struck the south end of the Long bridge?

A. Yes, sir; and under a different jurisdiction, because he struck a different road, but under the same superintendent, because the same superintendent was the superintendent of both roads.

Q. Is the uniform of the Alexandria & Fredericksburg different from the uniform of the Baltimore & Potomac?

A. Only so far as the buttons are concerned.

Q. Did he change his buttons when he got to the south end of the Long bridge?

A. I don't suppose he did, or his coat either.

Mr. TOTTEN: You don't know about that?

The WITNESS: I don't know.

By Mr. KENT:

Q. If the Virginia Midland officials had no responsibility or authority over their trains when they left Alexandria on their road to Washington, who did have the authority or responsibility over them?

A. The superintendent of the Alexandria and Washington and of the Baltimore and Potomac roads.

* * * * * * *

Q. I believe that you have stated, so far as you know, the same arrangement for the operation and management of Midland trains between Alexandria and Washington was in existence all the time during your receivership?

A. During my receivership; yes, sir.

Q. And that was the same arrangement that was in force when you were superintendent and before your receivership?

A. Yes, sir; to the best of my knowledge.

* * * * * * *

285 Q. Now, I will ask you about whether or not you know the mail contract with the Virginia Midland railway terminated at Alexandria, or not?

A. To the best of my knowledge, it did.

Q. And then the mail, I understand, was brought from Alexandria to Washington under a contract between your system of roads, whatever it was—am I correct?

A. Not with my system. I believe it was brought here under direct contract with the Alexandria & Washington road between Washington and Alexandria; that is, to the best of my knowledge.

Q. Then the mail contract with the Virginia Midland did not extend from Alexandria to Washington?

A. I do not think it did.

* * * * * * *

Q. I now hand you the time-table No. 3, and ask you to state who had that time-table printed, and who paid for it.

A. The Alexandria & Fredericksburg Railway Company, I believe, by J. N. Du Barry and John P. Green, trustees at that time. The voucher will show. The voucher has been exhibited. My recollection is it was paid by the trustees of the Alexandria & Fredericksburg railway.

Q. Who contributed to the cost of printing the same?

A. I have no doubt a proportion of it was paid by the Alexandria & Washington road.

Q. Any part of it by the Baltimore & Potomac?

A. I think not, sir. It is always customary for the Alexandria & Fredericksburg and the Alexandria & Washington to bear the expense of the time-tables; but I do not state that as a fact.

Q. That time-table runs over the Baltimore & Potomac track?

A. Yes, sir.

Q. I understood you to say that they prorated your expenses?

A. They did generally, but in the case of the time-table,
286 which is a small matter, my impression is that they did not, in that one instance, although the voucher will show.

* * * * * * *

Q. Did Charles E. Pugh, H. F. Kenney, or H. H. Carter have authority or power over any employees but their own?

A. Yes, sir; when they are running on our tracks he has full authority.

Q. Then, I understand you, that Charles E. Pugh, H. F. Kenney and H. H. Carter had power over the employees that are running trains on these two tracks?

A. Yes, sir, they have absolute power.

* * * * * * *

Q. Are you a shareholder in the Pennsylvania road?

A. To some extent, sir. I only wish it was larger.

On redirect examination said WILKINS testified, amongst other things, as follows:

Redirect examination by Mr. TOTTEN:

Q. When you took possession of the Washington & Alexandria track as receiver, what companies were operating trains or running trains over them?

A. The Baltimore & Potomac, the Alexandria & Fredericksburg, and the Virginia Midland.

Q. You took possession on what day?

A. On the 19th of January, 1882.

Q. Did the Alexandria & Fredericksburg Railroad Company have any tracks leading from Alexandria to the Long bridge at that time?

A. Yes, sir.

Q. At that time?

A. Tracks; yes, sir.

Q. The Alexandria & Fredericksburg road?

A. Excuse me, I thought you said the Alexandria and Washington. The Alexandria & Fredericksburg had no tracks north of St. Asaph's junction.

287 Q. Did they have tracks between Duke street and St. Asaph's junction?

A. Yes, sir; the Alexandria & Fredericksburg track is on one street and the Alexandria & Washington track is on another. The Alexandria & Fredericksburg track is on Fayette street and the Alexandria & Washington track is on Henry street. Duke street cuts both of these streets at right angles.

Q. Are there any other tracks than the two belonging to the Alexandria & Washington road between St. Asaph's junction and the Long bridge?

A. There are not.

Q. There are just these two railroad tracks?

A. Yes, sir.

Q. You took possession of them as receiver and operated them, as you have before stated?

A. I did.

Q. When did the Alexandria & Fredericksburg Company cease to hold the railroad track?

A. I do not remember the year, it was some time prior to my receivership. The Alexandria & Fredericksburg claimed the west track. There were two tracks between the south end of the Long bridge and St. Asaph's junction. The Alexandria & Fredericksburg built and laid the west track and claimed it, but it was determined by the court of appeals of the State of Virginia that that was unlawful.

Mr. Cook: Never mind what was determined by the court of appeals.

By Mr. Totten:

Q. What happened after that?

A. Then the Alexandria & Washington took possession of that west-bound track.

Q. That was before you were appointed receiver?

A. It was.

Q. Do you know how long they had been in possession before you were appointed receiver—I mean in possession of two tracks?

288 A. No, I cannot state the date from memory; possibly a year or two.

* * * * * * *

Q. I want to know something about the carrying of mails. There was a voucher produced here by which the Alexandria & Washington railroad was paid for carrying the mails in 1885, I believe. I want to know who got that money eventually?

A. I did.

Q. All of it?

A. All of it—wait a minute; no, sir; I am mistaken about that.

I am sure I did not get all of it, because a portion of it passed over the Baltimore and Potomac and a portion over the Alexandria and Fredericksburg track; because I have no doubt that the Alexandria mail was delivered at the station in Alexandria, which was on the Alexandria and Fredericksburg track. No, I have no doubt, although I cannot speak of my own knowledge, that it was divided between the companies.

Q. The Baltimore and Potomac was paid according to its track, its mileage?

A. Yes, sir; and the Alexandria and Fredericksburg according to its.

Q. And the Alexandria and Washington according to its?

A. Yes, sir.

Q. You, having no trains, could not carry any of it?

A. No, sir.

Q. Somebody else must have carried them?

A. Yes, sir.

Q. Do you know, as a matter of fact, the proportions which went to the Alexandria and Fredericksburg and the Alexandria and Washington, and the Baltimore and Potomac?

A. I do not, sir.

On recross-examination the witness testified, amongst other things, as follows:

289 Q. Was anything done when you were appointed receiver to give information to the public that you were running that road as receiver of the court—anything more than the order of the court?

A. Yes, sir; I issued a printed circular of that fact that I had taken possession of the property, and to continue the officers and employees.

Q. What did you do with these circulars?

A. They were generally distributed.

Q. Amongst whom?

A. Mainly amongst railroad people.

Q. Mainly amongst the railroads that had connection with your road?

A. Yes, sir; all the parties who were supposed to be interested.

Q. You published and issued no notice to the public of that fact?

A. Not as such.

Q. You did not publish in the papers of Washington or Alexandria the fact that you had taken possession of that road and were running it as receiver?

A. No, sir.

Q. You did not publish any notices in the depot at either end of the line of that act?

A. I am not sure of that. My impression is that I did.

Q. I would like to know the facts, if you can tell them.

A. I cannot tell about that.

Q. You are not able to say that you did?

A. Not positively.
Q. You put nothing in the cars that were running on the road?
A. No, sir; I had no cars to run.

By Mr. COLE:

Q. You had no cars to put them in?
A. I did not. I did not take liberties with other people's property.

290 Q. Col. Totten asked you something about the custom of selling railroad tickets. I wish you would state if you ever knew of any custom by which any railroad company ever did or would sell a ticket for a passage from one point to another, no point of which was over a line owned or controlled by the company selling the tickets.
A. Yes, sir.
Q. You have?
A. I know of one case, and I expect I know of a great many others.
Q. What case do you know of?
A. I know of the Pennsylvania railroad maintaining a ticket office in Boston. They had no road in Boston.
Q. Please read the question (question repeated). Col. Totten asked you something about the custom of selling railroad tickets. I wish you would state whether you ever knew of any custom by which any railroad company ever did or would sell a ticket for a passage from one point to another, no point of which was ever a line owned or controlled by the company selling the tickets.
A. I answered that I have knowledge of one case and possibly others.
Q. Now tell us what case that was; what company does that kind of business?
A. The Pennsylvania Railroad Company.
Q. You say they sell tickets in Boston to run some point, and that no part of the journey is on the road owned by the Pennsylvania Railroad Co.?
A. No; I did not understand your question.
Q. I wish you would state, if you know, of any custom by which any railroad company ever did or would sell a ticket for a passage from one point to another, no part of which was over a line owned or controlled by the company selling the ticket.
A. No, sir—excuse me, I do not; I did not understand your question.

291 Q. The Pennsylvania Railroad Company would not sell a railroad ticket from Baltimore, although they have an office there—they would not sell a ticket from Baltimore to Martinsburg, W. Va.?
A. Not over the Baltimore & Ohio road, they would not.
Q. They would not over any road, would they?
A. Yes, they would. The Pennsylvania road can establish connection by way of the Cumberland valley, if my recollection is not entirely at fault.

Q. That would pass over a part of their main line in doing that?
A. Yes, sir.
Q. Mr. Totten also asked you why the Pennsylvania Railroad Company paid these bills for freight, and I think your answer was, substantially, that the freight came principally from Philadelphia and New York, and that they had taken the freight from Baltimore to pay the bill. Have you your book there?
A. Yes, sir.
Q. I wish you would open it at these items for a minute.
A. Yes, sir; I have them.
Q. Now, the bill gives the names. Do you understand that to be the name of the party to whom the payment was made in this instance?
A. Yes; the name of the consignor, or the man that ships them, in other words.
Q. Taking these three bills, one on page 24, one on page 25, and one on page 26, and you get quite a number of Baltimore firms; don't you?
A. Yes, sir; I recognize some Baltimore firms there.
Q. Please point out those you recognize.
A. I do not recognize any on page 24. They may be there, however; I do not know everybody in Baltimore.
Q. On page 25?
A. On page 25, I recognize the name of Ira Day and R. B. Glenvill, and the Baltimore United Oil Co. and Kenn & Hagerty. Also S. G. B. Cook & Co., I believe, although I am not sure. On page 26, I recognize Smith, Dixon & Co., Guggenheimer & Co.,
292 that may be a Baltimore firm; but I am not sure; I recognize very few there.
Q. A few of them may be Baltimore people?
A. Yes, sir.

And upon cross-examination by plaintiffs' counsel, of Francis T. Bowler, a witness on behalf of defendants, he testified, amongst other things, that he was an engineer, and had been in the employ of the Baltimore and Potomac Railroad Company since 1879; and ran from Washington to Quantico; that the engine of the freight train in collision was the engine which he usually drove, but was not on it that night, because he was sick.

That James L. Davis, another witness for defendants, on cross-examination by plaintiffs' counsel, testified, amongst other things, that he had been running on these lines since 1872; that he was in the employ of the Alexandria and Fredericksburg Railway Company; that Du Barry is the man who engaged him; that he was paid by the Baltimore and Potomac Railroad Company, that is, was paid by a B. & P. check; that he ran a Baltimore and Potomac engine, or one having the initials B. & P. upon it, and ran most of the time between Alexandria and Washington, occasionally to Quantico and Baltimore.

That John S. Black, another witness for defendants, on cross-examination by plaintiffs' counsel, testified, amongst other things, that

he had been in the employ of the Northern Central railroad and the Baltimore and Potomac railroad since 1877, as an engineer; that he was in the employ of the Baltimore and Potomac in 1885, and ran a B. & P. engine from Washington to Quantico.

Alfred Redmiles, another witness on behalf of the defendants, on cross-examination by plaintiffs' counsel, testified, amongst other things, that during the year 1885 he was in the employ of the Baltimore and Potomac Railroad Company, and his usual run was from Washington to Baltimore, but he sometimes ran from Washington to Alexandria; that he often had to go there for stock.

293 Thomas Taylor, also a witness on behalf of the defendants, on cross-examination by plaintiffs' counsel, amongst other things, testified that he was the man who had charge of the automatic electric signals at the gauntlet, as set forth in a former bill of exceptions; that he did not know in what compan*ie*'s employ he was, but he was employed by J. K. Sharp, the assistant train master at the B. & P. depot in Washington, and was paid from the same pay-car from which the other employees upon the road were; that he never had any experience with electricity or machinery until the automatic signals were put up, and all the instruction or information he got or had in relation thereto when he took charge of them were given him by Kates, the man who put them up, in about three weeks, while he was putting them up and getting them into working condition; that the machinery by which said signals were worked frequently got out of order, and he fixed it when he could, and when he could not he reported the same to Kates at Wilmington, who would come over and fix them.

There was also other evidence given by several witnesses tending to show that the signals were sometimes out of order and would not work.

Kates, another witness on behalf of the defendants, on cross-examination by plaintiffs' counsel, amongst other things, testified that the automatic signals, like the ones in question, were a patented invention; that about five years before the time these were put up one had been in use on the Maryland division and at several places on the Pennsylvania Railroad Company's lines, but there were none in use that he knew of at the time these were erected; that these had been in use at the tunnel east of Washington, D. C., before they were put up at the gauntlet; that Superintendent Carter asked him if he thought they would suit for the Four-mile — arch, and he replied that they would be excellent for that place. He further testified that he never put up automatic elect*ive* signals prior to these at Four-mile run.

294 And thereupon one Charles S. Bennett, having been called as a witness by the defendant The Virginia Midland Railway Company to support the issues on their part joined, gave testimony tending to prove that he had been employed as a conductor or pilot in running trains over the Alexandria and Washington track between Alexandria and Washington, and was thereupon asked by the counsel for the said defendant The Virginia Midland Railway Company:

"Question. When you were conducting an ordinary passenger train from Alexandria to Washington, and the signal showed white to you, did you consider a train on the opposite side an obstruction to prevent you from going through?"

To which question the counsel for all the defendants, except the said Virginia Midland Railway Company, objected, which objection was by the court overruled, and the witness was allowed to answer, and did answer that a train standing north of the battery box was not an obstruction to me after passing the battery box and throwing the red light to him.

To which ruling of the court overruling the said objection and allowing the said answer to be given in evidence, the said counsel for the said defendants then and there excepted, which exception was noted upon the minutes of the court at the time, and said counsel for the said defendants prayed the court to sign and seal this, their twenty-fifth bill of exceptions, which was accordingly done this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for the defendant The Virginia Midland Railway Company, in order
295 to maintain the issue on their part joined, further asked the said Charles S. Bennett:

"Question. What were your rights that night with respect to the right of way of your train, the white light being exhibited to your engineer on approaching the signal?"

To which question the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, objected, which objection was by the court overruled, and the defendant was allowed to answer, and did answer, "We had exclusive right through there."

To which ruling of the court overruling the said objection and allowing the said answer to be given in evidence the said counsel for the said defendants then and there excepted, which exception was at the time noted upon the minutes of the court, and said counsel for said defendants prayed the court to sign and seal this, their twenty-sixth bill of exceptions, which is accordingly done, now for then, this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

And be it further remembered that after the testimony set forth in the foregoing bills of exceptions, numbered from one to twenty-six inclusive, which are hereto attached and referred to as and hereby made a part of this exception, was closed on both sides and given to the jury, the counsel for the defendant The Pennsylvania Railroad Company, on said testimony, moved the court to instruct the jury as follows, to wit:

"That upon the pleadings and evidence in these (consolidated) causes, the defendant The Pennsylvania Railroad Company is entitled to a verdict in its favor."

296 But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendant The Pennsylvania Railroad Company by its counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the Pennsylvania Railroad Company prays the court to sign and seal this, its twenty-seventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, and after the testimony as aforesaid in said causes had been concluded, the defendant The Baltimore & Potomac Railroad Company moved the court to instruct the jury as follows:

"Upon the pleadings and evidence in these (consolidated) causes, the defendant, The Baltimore & Potomac Railroad Company is entitled to a verdict in its favor."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendant The Baltimore & Potomac Railroad Company, by its counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the Baltimore and Potomac Railroad Company prays the court to sign and seal this, *his* twenty-eighth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, and after the
297 signing of the last bill of exceptions, and after the testimony, as aforesaid, in said causes had been concluded, the defendant The Alexandria & Fredericksburg Railway Company moved the court to instruct the jury as follows:

"Upon the pleadings and evidence in these (consolidated) causes the defendant The Alexandria and Fredericksburg Railway is entitled to a verdict in its favor."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendant The Alexandria and Fredericksburg Railway Company, by its counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the Alexandria and Fredericksburg Railway Company prays the court to sign and seal this, its twenty-ninth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, and after the signing

of the last bill of exceptions, and after the testimony in said causes as aforesaid, had been concluded, the defendant The Alexandria and Washington Railroad Company moved the court to instruct the jury as follows:

"Upon the pleading and evidence in these (consolidated) causes the defendant The Alexandria and Washington Railroad Company is entitled to a verdict in its favor."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court
298 the defendant The Alexandria and Washington Railroad Company, by its counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the Alexandria and Washington Railroad Company pray the court to sign and seal this, its thirtieth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

And be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are hereby made a part hereof, and after the testimony, as aforesaid, in said causes had been concluded, the defendant The Alexandria and Washington Railroad Company moved the court to instruct the jury as follows:

"If the jury shall be satisfied from the evidence that all the property of the Alexandria and Washington Railroad Company was, at the time of the accident, in the exclusive control of George C. Wilkins, the receiver thereof, appointed by a circuit court of the United States, the verdict must be in favor of the said Alexandria & Washington Railroad Company."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendant The Alexandria and Washington Railroad Company, by its counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the Alexandria and Washington Railroad Company prays the court to sign and seal this, *his* thirty-first bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled
299 causes, and after all the testimony was in, as aforesaid, and after the signing and sealing of the foregoing bills of exceptions of the said defendants, which are made a part hereof, the counsel for all of the said defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"There is no evidence in these causes from which the jury has a right to or can lawfully infer or find that the automatic signals in use at the place and time of the accident in question in these causes, and as managed and conducted, were insufficient or not proper for the careful management and protection of trains at that point."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendants severally duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants severally pray the court to sign and seal this, their thirty-second bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after all the testimony as aforesaid was given to the jury, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, moved the court to instruct the jury as follows:

"The rules and regulations adopted and prescribed for the conduct of running of trains on single tracks had no operation on and were not applicable to trains approaching the gauntlet under the arch where the accident in question happened."

300 But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court, the said defendants, severally, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants severally pray the court to sign and seal this, their thirty-third bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after all the testimony as aforesaid was given to the jury, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"The rules and regulations prescribed and established for the conduct and management of trains at the gauntlet (the place of the accident) at which the plaintiffs were injured, gave and permitted no priority in the use or occupation of the tracks to any one train over any other, and the Virginia Midland passenger train had no right of priority or superior right to proceed, because it was a passenger train proceeding north, over the Alexandria and Fredericksburg fast freight train, proceeding south."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court, the said defendants, severally, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants severally pray the court to sign and seal this, their thirty-fourth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

301 Be it remembered that upon the trial of the above-entitled causes, and upon the testimony aforesaid, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"The defendant The Baltimore & Potomac Railroad Company cannot be held liable for the injuries to the plaintiffs complained of, unless its agents were guilty of negligence which brought about or contributed to bring about the accident in question, and the jury cannot infer such agency from the fact that Bennett was a conductor or pilot on the train of the defendant The Virginia Midland Railway Company, wore the uniform of and was paid his salary, in part, by the said Baltimore and Potomac Railroad Company."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendants severally duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the said defendants severally pray the court to sign and seal this, their thirty-fifth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

302 "If the jury shall find from the evidence that the property of the defendant The Alexandria and Fredericksburg Railway Company was in the exclusive possession and under the control of Du Barry and Green, as the trustees under a mortgage, who were operating and managing the said railroad, and that said Du Barry and Green, as such trustees, ran trains in connection with the Alexandria and Fredericksburg railway running from Alexandria to Quantico, over the railroad tracks from Alexandria to Washington under an agreement or contract with George C. Wilkins, the receiver in possession and charge of the property and tracks of the Alexandria and Washington Railroad Company, the said defendant, the Alexandria and Fredericksburg Railway Company is entitled to a verdict in its favor in these causes."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendants severally duly excepted, and the exception was at the time noted upon the minutes of the court, and counsel for the defendants severally pray the court to sign and seal this, their thirty-sixth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that on the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, moved the court to instruct the jury as follows:

"If the jury shall find from the evidence that the defendant The Alexandria and Fredericksburg Railway Company, as a corporation, neither by its servants or agents, or otherwise, exercised any authority or control over the line of railroad between St. Asaph
303 street junction, in Alexandria, Virginia, and the south end of the Long bridge over the Potomac river, after the receiver of the Alexandria and Washington railroad took possession of said line of railroad, the verdict must be for the said defendant The Alexandria and Fredericksburg Railway Company."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was at the time noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their thirty-seventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"The defendant The Baltimore & Potomac Railroad Company cannot be held liable for the injuries to the plaintiffs complained of, unless its agents were guilty of negligence which brought about, or contributed to bring about, the accident in question, and the jury cannot infer such agency from the fact, should the jury find it to be a fact, that Bennett, who was put on the train of the Virginia Midland Railroad Company, with authority to control the movements of the train, subject to the rules and regulations, if he should deem it necessary, provided the jury shall further find that said Bennett did not in fact interfere with or exercise any control over said train after it was started at Alexandria on its journey to Washington."

304 But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court, the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their thirty-eighth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes and after the signing and sealing of the defendants' foregoing bills

of exceptions, which are made a part hereof, and upon the evidence aforesaid, the counsel for all the said defendants in both suits, except the Virginia Midland Railway Company, asked the court to instruct the jury as follows:

"If the jury shall be satisfied from the evidence that the men who controlled and managed the Alexandria and Fredericksburg fast freight train, which collided with the passenger train at the time the injuries of the plaintiffs as complained of were caused, were wholly paid by the trustees of the Alexandria and Fredericksburg Railroad Company and the receiver of the Alexandria and Washington Railroad Company for the services they rendered south of the Long bridge, and shall also find that the business over the said railroads leading from and out of Washington city and over the Long bridge to the south, was managed by one set of superintendents and other officers who were paid *pro rata* by the said trustees of the Alexandria and Fredericksburg Railway Company, the receiver of the Alexandria and Washington Railroad Company, and the Baltimore and Potomac Railroad Company, for such services, then the Baltimore & Potomac Railroad Company is not liable for any damages which may have been caused in whole or in part by said Alexandria and Fredericksburg fast freight train, and it is entitled to your verdict."

305 But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their thirty-ninth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, and upon the evidence set forth in the foregoing bills of exceptions, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, moved the court to instruct the jury as follows:

"If the jury shall be satisfied from the evidence that the engineman Bruce, in charge of the engine hauling the passenger train which ran into or collided with the Alexandria and Fredericksburg fast freight train, at the time of the accident in question, saw, or ought to have seen, north of the arch the head-light of the engine hauling the said fast freight train after he, said Bruce, had passed the signal light south of the arch and said gauntlet, said engineman is chargeable with the negligence causing the injuries complained of, provided the jury shall also find from the evidence that said engineman increased the speed of his train between said light and the gauntlet, and that said freight train was at the time so near to said gauntlet as to render such increased rate of speed dangerous."

But the court refused to grant said prayer and allow the same t

be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fortieth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

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E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"If the jury shall find from the evidence that the injury to the plaintiffs was proximately caused by the negligence of the engineman Bruce, who was in charge of the locomotive drawing the train of the Virginia Midland Railroad Company at the time of the accident, the verdict must be in favor of the defendants The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railroad Company, and The Pennsylvania Railroad Company."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-first bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all of the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

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"If the jury shall find from the evidence that the injury to the plaintiffs was caused solely by the negligence of the engineman Bruce, who was in charge of the locomotive drawing the train of the Virginia Midland Railway Company at the time of the accident, the verdict must be in favor of the defendants, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railroad Company, The Baltimore and Potomac Railroad Company, and The Pennsylvania Railroad Company."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-second

bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both cases, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"If the jury shall be satisfied from the evidence that the engineman Bruce, in charge of the engine hauling the passenger train which ran into or collided with the Alexandria and Fredericksburg fast freight train, at the time of the accident in question, saw north of the arch the head-light of the engine hauling the said fast freight train after he had passed the signal light south of the arch
308 and as he approached the gauntlet, the said engineman is chargeable with the negligence causing the injury to the plaintiffs."

But the court refused to grant said prayer and allow the same to be read to the jury, to which ruling and opinion of the court the defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-third bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"If the jury shall be satisfied from the evidence that the engineman Bruce, in charge of the engine hauling the passenger train which ran into or collided with the Alexandria and Fredericksburg fast freight train, at the time of the accident in question, saw, or ought to have seen, north of and near to the arch the head-light of the engine hauling the said fast freight train after he had passed the signal light south of the arch and as he approached the gauntlet, and that, under the circumstances, he unreasonably increased the speed of his train as he approached said gauntlet, the said engineman is chargeable with the negligence causing the injury to the plaintiffs."

But the court refused to grant said prayer and allow the same to be read to the jury, to which ruling and opinion of the court, the said defendants, by counsel, duly excepted, and the exception
309 was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal

this, their forty-fourth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, moved the court to instruct the jury as follows:

"Where the plaintiff seeks to charge a defendant, other than the defendant who actually caused the injury, for the damage suffered by him thereby, the burden rests upon such plaintiff to show affirmatively that such defendant who did not actually cause the injury was liable therefor, and a joint liability must be made out clearly to the satisfaction of the jury by clear proof and unambiguous circumstances and the fact that the defendants The Alexandria and Washington Railroad Company, The Baltimore and Potomac Railroad Company, and The Alexandria and Fredericksburg Railway Company, for the purpose of convenience and economy may have transported persons and property from the Baltimore and Potomac depot in Washington to Alexandria, Virginia, on the line of the Alexandria and Washington railroad, each paying its proportionate share of the expense of doing the business, and the freight or passage money being divided *pro rata* between them, did not make them partners, nor agents one of the other, although Leib, treasurer, Carter, superintendent, Pugh, manager, and others, may have acted for the said three defendants in auditing and settling the accounts and in conducting such business of transportation over said lines of railroad."

310 But the court refused to grant said prayer and allow the same to be read to the jury, to which ruling and opinion of the court, the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-fifth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both cases, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"If the jury shall find from the evidence that Bruce, the engineman in charge of the engine hauling the north-bound passenger train which was in the collision in question, saw, or ought to have seen, the head-light of the freight-train engine on the north side of the arch at or about the time he passed the signal south of the arch, and that said engineman did not approach the gauntlet or arch

prepared to stop, he was guilty of negligence proximately causing the accident, and in that event the defendants The Alexandria and Fredericksburg, The Alexandria and Washington, The Baltimore and Potomac, and The Pennsylvania Railroad Companies are entitled to a verdict in their favor."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their
311 forty-sixth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, *and* counsel for all of the defendants in both cases, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"If the jury shall find from the evidence that Bruce, the engineman in charge of the engine hauling the north-bound passenger train which was in the collision in question, saw the head-light of the freight-train engine on the north side of and near to the arch at or about the time he passed the signal light south of the arch, and that said engineman did not approach the gauntlet or arch prepared to stop, he was guilty of negligence, and must be held responsible for the accident, and in that event the defendants The Alexandria and Fredericksburg Railroad Company, The Alexandria and Washington Railroad Company, The Baltimore and Potomac Railroad Company, and The Pennsylvania railroad are entitled to a verdict in their favor."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-seventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled
312 causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"When a passenger is injured on a carrier's vehicle from the mutual concurrent neglect of those in charge of that vehicle and of another party in charge of another vehicle of another carrier, the

carrier on whose vehicle the passenger is must answer for the injury, and the other carrier is not liable."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-eighth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"The liability for the injury suffered by the plaintiffs falls upon the company in whose service the person was whose neglect or wrong-doing caused the injury, and if the jury believe from the evidence that the engineman Bruce was employed and paid by the defendant The Virginia Midland Railroad Company, and ran the engine between Alexandria and the place of collision without any interference, direction or control by Bennett therewith, and
313 that the collision was caused by his fault or negligence, then the defendants The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company are not liable."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their forty-ninth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the counsel for all the defendants in both suits, except the Virginia Midland Railway Company, severally, and each for itself, moved the court to instruct the jury as follows:

"The jury is instructed to wholly disregard the reports purporting to be reports of the Alexandria and Fredericksburg Railway Company, and the Alexandria and Washington Railroad Company, admitted in evidence to the jury, and read from a printed book called the 'Ninth Annual Report of the Railroad Commissioners of the State of Virginia,' and to give such documents no consideration whatsoever."

But the court refused to grant said prayer and allow the same to be read to the jury, to which opinion and ruling of the court the said defendants, by counsel, duly excepted, and the exception was,
314 at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fiftieth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

And be it further remembered that thereupon the court, of its own motion, charged the jury, which charge is here at large inserted in this bill of exceptions, and made part of the record in these causes, to wit:

Charge to Jury.

The COURT: The cause of action in the two causes, in relation to which you have heard the evidence, and which are about to be submitted to you by the court, are fully and distinctly set forth in the declarations, the substance of which was stated to you by counsel in the opening of the case. You will have the declarations with you in your retirement, and if you desire you can refer to them for the purpose of refreshing your mind as to their contents.

The Pennsylvania Railroad Company and the Virginia Midland Railway Company for plea say they are not guilty. The Baltimore and Potomac Railroad Company, in addition to plea of not guilty, says it is not a common carrier south of the south end of the Long bridge, and upon trial they say it is because the charter of the Baltimore and Potomac Company terminates its road at that point.

The Alexandria and Washington Railroad Company makes the same plea, that it was not a common carrier on the road at the time and place of the accident in question, because, they say, the road from Alexandria and Washington was at the time under the control of a receiver theretofore duly appointed. It is not disputed that Mr. Wilkins had been appointed receiver and held his office at the time of the accident. The question now is whether he alone is liable for injuries received on the road by reason of negli-
315 gence, or whether the Alexandria and Washington Railroad Company is not liable, notwithstanding the receivership.

If you find from the evidence that the Alexandria and Washington Railroad Company was carrying the United States mail between Alexandria and Washington, and the plaintiffs were in charge thereof as postal clerks, duly commissioned and designated by the United States for that duty, and the Alexandria and Washington Railroad Company was paid by the United States by drafts payable to the order of the agent of said company appointed by its board of directors to receive the same, and that the freight and passenger trains which collided and caused the injury to plaintiffs were running over the said road in pursuance of an arrangement made by the parties in control of said road prior to the appointment of the receiver of said road, and if when the receiver was appointed he continued in office as superintendent, general manager and treas-

urer the same persons as had heretofore discharged the duties of these positions, and if the business of this railroad, so far as was known to the public, was continued in the same way, so far as the general public could know as before, and was so conducted at the time of the accident, and the only substantial duty that the receiver discharged was to receive the net earnings of the road from the treasurer and to account therefor to the court by which he was appointed, then if you shall find that the Alexandria and Washington Railroad Company was guilty of negligence from the evidence and under the instructions of the court, your verdict will be against it and for the plaintiffs. But if you are satisfied that the business on the Alexandria and Washington railroad, so far as the Alexandria and Washington Railroad Company's interests *was* concerned, was conducted by the receiver after his appointment, and to the time of the collision in question, in his own name and in such manner as that it could be generally known by the public that he and
316 not the company conducted the business and controlled the road and its management, and that he did so to the entire exclusion of any control or participation by the Alexandria and Washington Railroad Company, its officers and board of directors, then your verdict should be for the Washington and Alexandria Railroad Company.

The Alexandria and Fredericksburg Railroad Company also pleads that it was not a common carrier on the road where the accident occurred, in addition to the plea of not guilty, and upon this trial it supports this plea by showing that its road at the time of the accident, and for some time before, had been in the possession of trustees, by virtue of the provisions of a deed of trust executed by the company to secure its indebtedness, the condition of which had become broken by the maturity and non-payment of the debts so secured. In order that the Alexandria and Fredericksburg company be acquitted from the responsibility for this reason, it should, in any event, appear that in fact the business of management and operation of the road was conducted by the trustees to the entire exclusion of the company, its officers and board of directors, and that this was so notoriously so that the fact may well be presumed to be known to the public. Besides, it should appear that the trustees were not appointed by the procuration or assent of the railroad company; for, if so, the trustees would be as much the agents of the company as the grantees in the trust deed. The supreme court of appeals of the State of Virginia, in an action brought against the Alexandria and Fredericksburg Railroad Company for personal injuries resulting from negligence on the road while in the possession of the trustees by virtue of a deed of trust, under conditions precisely similar to those shown in this case, held that "no provision is found in the charter of the defendant company, or the general railroad law of Virginia, which will authorize the company to transfer to trustees or to mortgagees, under the deed of trust given as a mere incumbrance and security, the right and legal capacity to
317 step into the shoes of the company and assume and exercise indefinitely the franchises, rights and privileges of the com-

pany, so as to give the company exemption and immunity from responsibility for all injuries inflicted by the operation of the road by the trustees." I quote this language for convenience and accuracy, and adopt it, and give it to you as the law in this case. It follows that the Alexandria and Fredericksburg Company cannot be excused from liability because of any possession shown in trustees.

The Baltimore and Potomac Company has shown by its charter that its road proper stops at the south end of the Long bridge. But it is claimed by the plaintiffs that several years before the occurrence of the collision under consideration an arrangement was made by the Baltimore and Potomac, the Alexandria and Washington, and the Alexandria and Fredericksburg railroad companies, which was in force at the time of this accident, by which these three companies were to have a community of interest in operating the three roads as a single line in the business of transporting freight and passengers. It will be your duty to carefully consider the testimony relating to this claim thus made, and if you find therefrom that there was an arrangement by which the several trains run by each company over these roads were in the interest of all such, contributing to the expense and sharing a proportion of the profits as they might be determined by a common agent, according to a rule agreed upon by them, each company would be liable for an injury occurring by the negligence of the employees on any one of such trains, if under the particular circumstances the injured party as a matter of law and fact be entitled to a recovery from either company. This injury and direction has fitting application to the fast freight train south-bound which was in collision, inasmuch as it started from Baltimore to run over the entire road of each of these companies to Quantico. You will look to the evidence for
the purpose of determining, as far as you may, whether
318 it came within any such alleged arrangement by plaintiff, as
I have already mentioned. To determine whether there was any such arrangement it will be proper for you to inquire whether the evidence shows that trains run over the tracks of these three companies to transact their business, were made up of cars and locomotives belonging to one or two or three of the companies indifferently, as might be convenient, and whether the employees running and having charge of such trains were those of either of the companies as might be suitable or convenient for the occasion, whether the general manager, superintendent, train master and other officers having control of the business were the same person-, and whether such officers in fact conducted the business on and over the roads of these three companies as of that one line, a single business, so far as the public had opportunity of knowing, the accounts being kept by a common agent, who made a division of expenses and profits between these companies according to an arrangement understood by and known to each of these companies and their privies, but unknown to the public, including the plaintiffs.

If you shall find these several inquiries in the affirmative, then as to these plaintiffs it will be your duty to regard these defendant companies as joint principals, each having an interest in the tra

so run upon said line, and jointly and severally liable for the negligence of any of the employees upon any of such trains, provided you shall find that the Alexandria and Washington Railroad Company is properly sued in this action from the evidence and under instructions already given; and even if you find that the receiver, and not the Alexandria and Washington Railroad Company, should have been sued, the liability of the Baltimore and Potomac and the Alexandria and Fredericksburg Railroad Companies will still remain precisely as though the Alexandria and Washington Company had been properly sued. If, in your judgment, the evidence only shows
319 that an arrangement for convenience was made between the Baltimore and Potomac, the Alexandria and Fredericksburg, and the Alexandria and Washington Railroad Companies that the trains of one company, in charge of its officers, employees and servants, and known as its train, and in the conducting of its business, might run over the tracks of either or both of the others for a compensation agreed upon between them, the account for mutual charges in consequence thereof to be kept by a common agent, and if in addition the same persons occupied the position of general manager, auditor, treasurer, superintendent, and train master of these roads, this would be insufficient to authorize you to hold these three companies as joint principals, and each liable for the negligence of the other in running such trains.

But, as to the south-bound fast freight train, it is proper for you to inquire under whose immediate authority it was being run at the time and place of the collision; for, if you shall find that the negligence of the employees on that train directly contributed to or wholly caused the collision, then the defendant company or companies under whose authority the train was then and there conducted and controlled would be responsible to the plaintiffs in damages for the injuries they thereby received.

It is proper that the court should call your attention particularly to your duty in considering the liability of the defendants for any negligence of the employees on the north-bound passenger train at the time and place of the collision. It is contended by the Virginia Midland Railroad Company that having reached the end of its road at Alexandria it surrendered the control of its train to the Alexandria and Washington Railroad Company, or to that company and such other of the defendant companies as you may find to have been at that time associated with it in running trains over the Alexandria and Washington railroad; that its responsibility for carrying the mail there ceased, and then and there devolved upon the Alexandria and Washington Company with whom the Government
320 had an arrangement for its safe transportation; that the Alexandria and Washington Company, either alone or with its associates, if you so find the fact to be, having placed its or their pilot or conductor in charge of the train from Alexandria to Washington, and having, without objection, permitted the other employees, including the engineer of the Virginia Midland Company, to remain on duty until the train reached Washington, that the Virginia Midland Company was thereby released from all re-

sponsibility to the plaintiffs for negligence of any of the employees on the train between these two points.

If the jury is satisfied by the evidence that the Virginia Midland Railroad Company delivered its north-bound passenger train to the Alexandria and Washington Railroad Company, or to its receiver, or to either, together with any other defendant that you may find to have been associated with the receiver or Alexandria and Washington Company at Alexandria, together with the employees of the Virginia Midland Company, and the party or parties that you may find to be legally responsible for the proper running of trains upon the Alexandria and Washington Railroad Company, accepted it and placed thereon their pilot or conductor with authority to control the train from Alexandria, and you further find that the Alexandria and Washington Railroad Company, or its receiver, was responsible for the transportation of the mail of which the plaintiffs then had charge as postal clerks of the United States, then the party or parties, whoever you may find them to be, who were legally authorized to control the trains running on the Alexandria and Washington railroad from Alexandria to Washington, are in law responsible to the plaintiffs for any injury resulting to them by reason of the negligence of any of the employees which directly caused the collision in question. But if this be so, the Virginia Midland Railroad Company may also be responsible. If the Virginia Midland Company had passengers and baggage on this train which they had
321 contracted to transport from points on its railroad proper to the city of Washington it would be responsible for the proper conduct of its own employees on that train from Alexandria to Washington, and if the collision was caused wholly or in part by the negligence of the engineer Bruce, who was employed and paid for his entire services by the Virginia Midland Co., (if you find he was), then the Midland Railway Company would be responsible to the plaintiffs for the damages resulting from their injuries on this occasion.

But the Midland Railway Company contends that no negligence is to be imputed to the engineer Bruce. Upon this point the jury are admonished to carefully consider the evidence. Did Bruce carefully approach the signal light prepared to stop? Did he carefully observe all the precautions required by the rules which were given him as a guide? Did he observe the signal at the proper time, and did the signal show white, and was there then, so far — he could observe, a clear track? Was this a place of danger, and did he, in view of that fact, obeying the rules after passing the signal, proceed with proper care and caution?

If you find all these inquiries in the affirmative, then Bruce was not guilty of negligence But connected with these inquiries some further comment is proper. As to whether the track through the gauntlet was a single or double track, in the light of rule No. 1, relating to the rights of trains on a single track, the undisputed evidence is that the tracks were so interlaced through the arch, and for some distance on either side of the arch, that it was impossible for two trains running in opposite directions to pass without

collision, substantially as would be the fact on any single track. The provision in rule No. 1, giving all "north-bound" trains on single track "the absolute right of track over trains of the same inferior class, running in opposite direction," was manifestly intended to prevent collisions. Rule No. 1 was then applicable to the "gauntlet," so called, and as a consequence the north-bound passenger train, on which the engineer Bruce was, had the right of track over the south-bound fast freight train, which was an inferior train to the passenger train, as will be seen by rule 80, 81, and others specified on the time-table given to the engineer Bruce, which is in evidence. This construction is strongly supported by rules 77, 78, 79, 80, 81, 87, 88, 91, all of which, as well as 90, and the special directions on the corner of the time-table referring to rule 90, and perhaps other rules, had reference to the duty of the engineer Bruce and on the freight train in running their trains through the gauntlet on the night of the occurrence of this collision. Notwithstanding Bruce may have complied with all the rules of the time-table, yet if this was a place of danger he was bound to be watchful, and if he discovered any danger of a collision it would be his duty to exert every possible power and use every means to avoid a collision. Did he see the approaching freight train? If so, did he know that it was moving or had he any cause to believe it was moving towards him? Unless he knew or believed that it was moving toward the arch he had a right to believe that the freight train would stop until he passed the gauntlet, and in order that the engineer and conductor of the south-bound train would observe the rules and give to the north-bound train the right of track.

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As to the south-bound freight train, it was the duty of the engineer and conductor thereon, if they knew or saw that the north-bound train was on the opposite side of the arch, to stop before reaching the point of intersection of the tracks, and permit the north-bound train to pass through the gauntlet before proceeding. But, it is claimed that the signals were out of order and did not work on the night of this accident, and that because of this the collision occurred.

If, gentlemen, you find this to be the fact, and the engineers and conductors on each of the trains were not guilty of violating any of the rules given for their guidance, and were not negligent in the management of their trains respectively, then the Alexandria and Washington Railroad Company, or its receiver, as you may find upon the evidence and instructions already given to you, together with such of the other defendant companies, if any, as you may find from the evidence and the instructions of the court, are — were jointly associated and acting with the Alexandria and Washington Railroad Company, or with the receiver, in running and operating trains over the Alexandria and Washington railroad, are guilty of negligence in not furnishing proper and safe signals, or making other safe and suitable provision, to enable trainmen to pass this dangerous place with their trains in safety.

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Some parol evidence has been given to the jury, with the view and object of establishing a general custom among trainmen and engineers to stop when approaching the arch upon discovering a train

on the opposite side of the arch, and then await a signal from one to the other to proceed, and that such signal was given and regarded without any reference to priority of one train over another. I think it is my duty to rule all this testimony out, and to instruct you to disregard it altogether, first, because the evidence of this character which has been given falls far short of establishing any such general rule, and is, therefore, worthless for any purpose; secondly, any such parol rule or understanding would be in conflict with the printed rules, which were furnished to engineers and conductors, as the court has construed them, and advised you that you are bound to regard them for the purpose of this case.

As to the liability of the Pennsylvania Railroad Company, I give you in charge the following prayer of its counsel:

"In determining the question as to whether or not the defendant the Pennsylvania Railroad Company is liable for the injuries complained of in these causes, the jury cannot infer such liability from the fact (if the jury should find it to be a fact) that the
324 said defendant was, at the time of the accident complained of, the owner of stock or of bonds issued by either of the other defendant corporations. Such ownership cannot be considered as evidence tending to establish or prove such liability." That is all given except the last sentence. I think that observation would be misleading and would require comment. The fact that they owned bonds and stock might be, and I think properly, competent evidence to go to the jury in this case. These circumstances are to be considered with all the other circumstances, from which the jury are to determine whether or not the Pennsylvania Railroad Company has any such interest in this case as will hold it liable and responsible to the plaintiffs.

Mr. TOTTEN: Your honor does not grant that prayer.

The COURT: I give it all except the last sentence.

Neither will it be sufficient to show in addition that the directory of the Pennsylvania Company and that of the other defendant companies, excepting the Virginia Midland Company, were composed to a greater or less extent of the same, or that some of the officers of the Pennsylvania Company were the same as in the other defendant companies. In order to find that the Pennsylvania Company is liable in this case you must find that there was some actual arrangement by which the Pennsylvania Company was interested with the other companies, other than the Midland Company, in running the trains over this road which the other companies, except the Midland Company were interested in; or you must be satisfied from the evidence that by reason of some arrangement of condition of things, the Pennsylvania Company had the right as between the parties as a corporation to and did issue any order or regulation that it chose to those who were engaged in running trains over the Alexandria and Washington railroad in relation thereto, and that such order and reg-
325 gulations when made were accepted and obeyed. If satisfied of this by evidence which to your minds establishes the fact by a preponderance of evidence you will return a verdict against the

Pennsylvania Railroad Company; if you find that those who were operating the trains that met in the collision were guilty of negligence and were the same companies that you find were so subject to the orders and regulations made by the Pennsylvania Company. You are not to act upon surmise or suspicion but upon evidence direct or circumstantial sufficient to satisfy you of the existence of the fact, and if the evidence fails to establish the necessary facts your verdict should be for the Pennsylvania Railroad Company. Indeed, it is proper to say here that all facts necessary to be established, in order that plaintiffs may recover against any of the defendants, must be established by a preponderance of the evidence.

The following prayer asked by the counsel for the Virginia Midland Railroad Company is given you as the law: "In this action the jury is empowered to find any one of the defendants not guilty, and the others or any of them guilty, and it is their duty to so find if in their opinion from the whole evidence such a distinction should be made."

If you shall find for the plaintiffs it will be your duty to return a verdict against such of the defendants as you may find liable to them in this action and to assess such damages for each of the plaintiffs as in your judgment each is entitled. In this connection I give you as a correct statement of your duty prayer No. 6 asked by the plaintiffs:

"If the jury shall find for the plaintiffs against any one or more of the defendants they should award them damages in such amounts severally as will fairly compensate them for the suffering, physical and mental, which the evidence shows they experienced by reason of the accident and their injuries, and for their loss of time in consequence thereof and their inability to engage in their ordinary occupations; if any, caused by the accident; and if the jury
326 shall believe from the evidence that the plaintiffs or either of them will suffer in the future from the effects of their injuries caused by said accident, or that they or either of them are in any degree permanently injured or disabled thereby, then they should also award such plaintiff or plaintiffs such additional damages therefor as will fairly compensate them for the same."

You will take the case, gentlemen, and return such a verdict as in your judgment the evidence under the instructions of the court makes — your duty to return.

But the counsel for all the defendants, except the Virginia Midland R. W. Co., objected to the inserting of the charge of the court at large in the bill of exceptions, he having before the jury retired to consider of their verdict in these causes, pointed out the following matters of law in said charge and objected thereto separately, and at the time thereof, and excepted to the same; and the said matters of law and exceptions thereto are contained in the following exceptions, to wit:

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"If you find from the evidence that the Alexandria and Washington Railroad Company was carrying the United States mail between Alexandria and Washington, and the plaintiffs were in charge thereof as postal clerks, duly commissioned and designated by the United States for that duty, and the Alexandria and Washington Railroad Company was paid by the United States by drafts payable to the order of the agent of said company appointed by its board of directors to receive the same, and that the freight and passenger trains which collided and caused the injury to plaintiffs were running over the
327 said road in pursuance of an arrangement made by the parties in control of said road prior to the appointment of the receiver of said road, and if when the receiver was appointed he continued in office as superintendent, general manager and treasurer the same persons as had theretofore discharged the duties of these positions, and if the business of this railroad, so far as was known to the public, was continued in the same way, so far as the general public could know, as before, and was so conducted at the time of this accident, and the only substantial duty that the receiver discharged was to receive the net earnings of the road from the treasurer and to account therefor to the court by which he was appointed, then, if you shall find that the Alexandria and Washington Railroad Company was guilty of negligence from the evidence and under the *the* instructions of the court, your verdict will be against it and for the plaintiff."

To which instruction and matter of law in the charge of the court, the defendants, by counsel, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-first bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion, further instructed the jury as follows:

"If you are satisfied that the business on the Alexandria and Washington railroad, so far as the Alexandria and Washington Railroad Company's interest was concerned, was conducted by the re-
328 ceiver after his appointment and to the time of the collision in question, in his own name and in such manner as that it could be generally known by the public, that he and not the company conducted the business and controlled the road and its management, and that he did so to the entire exclusion of any control or participation by the Alexandria and Washington Railroad Company, its officers and board of directors, then your verdict should be for the Alexandria and Washington Railroad Company."

To which instruction and ruling of the court, counsel for all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the de-

fendants pray the court to sign and seal this, their fifty-second bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion further instructed the jury as follows:

"In order that the Alexandria and Fredericksburg Company be acquitted from responsibility for this reason it should in any event appear that in fact the business of management and operation of the road was conducted by the trustees to the entire exclusion of the company, its officers and board of directors, and that this was notoriously so, so that the fact may well be presumed to be known to the public."

To which instruction and ruling of the court, counsel for
329 all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-third bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion further instructed the jury as follows:

"Beside it should appear that the trustees were not appointed by the procuration or assent of the railroad company, for if so the trustee- would be as much the agents of the company as the grantees in the trust deeds."

To which instruction and ruling of the court counsel for all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-fourth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"The supreme court of appeals of the State of Virginia,
330 in an action brought against the Alexandria and Fredericksburg Railroad Company for personal injuries resulting from negligence on the road while in the possession of trustees by virtue of a deed of trust, under conditions precisely similar to those shown

in this case, held that 'No provision is found in the charter of the defendant company, or the general railroad law of Virginia, which will authorize the company to transfer to trustees or to mortgagees, under the deed of trust given as a mere incumbrance and security, the right and legal capacity to step into the shoes of the company and assume and exercise indefinitely the franchises, rights and privileges of the company, so as to give the company exemption and immunity from responsibility for all injuries inflicted by the operation of the road by the trustees.' I quote this language for convenience and accuracy, and adopt it, and give it to you as the law in this case. It follows that the Alexandria and Fredericksburg Company cannot be excused from liability because of any possession shown in trustees."

To which instruction and ruling of the court, counsel for all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-fifth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily, of its own motion, instructed the jury as follows:

"It is claimed by the plaintiffs that several years before
331 the occurrence of the collision under consideration, an arrangement was made by the Baltimore and Potomac, the Alexandria and Washington, and the Alexandria and Fredericksburg Railroad Companies, which was in force at the time of this accident, by which these three companies were to have a community of interest in operating the three roads as a single line in the business of transporting freight and passengers. It will be your duty to carefully consider the testimony relating to this claim thus made, and if you find therefrom that there was an arrangement by which the several trains run by each company over these roads were in the interest of all each contributing to the expence and showing a division of the profits as they might be determined by a common agent according to a rule agreed upon by them, each company would be liable for an injury occurring by the negligence of the employees on any one of such trains, if under the particular circumstances the injured party as a matter of law and fact be entitled to a recovery from either company. This inquiry and direction has fitting application to the fast freight train south-bound which was in this collision, inasmuch as it started from Baltimore to run over the entire road of each of these companies to Quantico. You will look to the evidence for the purpose of determining, as far as you may, whether it came within any such alleged arrangement by plaintiffs as I have already mentioned. To determine whether there was any such arrangement it will be proper for you to in-

quire whether the evidence shows that trains run over the tracks of these three companies to transact their business were made up of cars and locomotives belonging to one or two or three of the companies indifferently, as might be convenient, and whether the employees running and having charge of such trains were those of either of the companies as might be suitable or convenient for the occasion, whether the general manager, superintendent, train master, and other officers having control of the business were the same persons,
and whether such officers in fact conducted the business on and
332 over the roads of these three companies as that of one line,
a single business, so far as the public had opportunity of knowing, the accounts being kept by a common agent, who made a division of expenses and profits between these companies according to an arrangement understood by and known to each of these companies and their privies, but unknown to the public, including the plaintiffs. If you shall find these several inquir-es in the affirmative, then as to these plaintiffs it will be your duty to regard these three defendant componies as joint principals, each having an interest in the trains so run upon said line, and jointly and severally liable for the negligence of any of the employees upon any of such trains, provided you shall find that the Alexandria and Washington Railroad Company is properly sued in this action, and even if you find that the receiver, and not the Alexandria and Washington Railroad Company, should have been sued, the liability of the Baltimore and Potomac and the Alexandria and Fredericksburg Railroad Companies will still remain precisely as though the Alexandria and Washington Company had been properly sued."

To which instruction and ruling of the court, counsel for all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, there fifty-sixth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily
and of its own motion, further instructed the jury as follows:
333 "As to the south-bound fast freight train it is proper for
you to inquire under whose immediate authority it was being run at the time and place of the collision, for, if you shall find that the negligence of the employees on that train directly contributed to or wholly caused the collision, then the defendant company or companies under whose authority the train was then and there conducted and controlled would be responsible to the plaintiffs in damages for the injuries they thereby received."

To which instruction and ruling of the court, counsel for all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at

the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-seventh bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion further instructed the jury as follows:

"As to whether the track through the gauntlet was a single or double track in the light of rule No. 1, relating to the right of trains on a single track, the undisputed evidence is that the tracks were so interlaced through the arch, and for some distance on either side of the arch, that it was impossible for two trains running in opposite directions to pass without collision, substantially as would be the fact on any single track. The provisions in rule No. 1, giving all 'north-bound' trains on single track 'the absolute right of track over trains of the same or inferior class, running in opposite
334 direction,' was manifestly intended to prevent collisions. Rule No. 1 was then applicable to the 'gauntlet,' so called, and as a consequence the north-bound passenger train, on which the engineer Bruce was, had the right of track over the south-bound fast freight train, which was an inferior train to the passenger train, as will be seen by rules 80, 81 and others, specified on the time-table, given to the engineer Bruce, which is in evidence. This construction is strongly supported by rules 77, 78, 79, 80, 87, 88 and 91, all of which, as well as 90, and the special direction on the corner of the time-table referring to rule 90, and perhaps other rules, had reference to the duty of the engineer Bruce and on the freight train in running their trains through the gauntlet on the night of the occurrence of this collision. Notwithstanding Bruce may have complied with all the rules, he was bound to be watchful, and if he discovered any danger of a collision it would be his duty to exert every possible power and use every means to avoid a collision. Did he see the approaching freight train? If so, did he know that it was moving, or had he any cause to believe it was moving towards him? Unless he knew or believed that it was moving toward the arch he had a right to believe that the freight train would stop until he passed the gauntlet in order that the engineer and conductor of the south-bound train would observe the rules and give to the north-bound train the right of track."

To which instruction and ruling of the court, counsel for all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-eighth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

335 Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"As to the south-bound freight train, it was the duty of the engineer and conductor thereon, if they knew or saw that the north-bound train was on the opposite side of the arch, to stop before reaching the point of the intersection of the tracks and permit the north-bound train to pass through the gauntlet before proceeding."

To which instruction and ruling of the court, counsel for all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their fifty-ninth bill of exceptions, which is accordingly done, now for then, this 15th day of July A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"It is claimed that the signals were out of order and did not work on the night of this accident, and that because of this the collision occurred. If, gentlemen, you find this to be the fact, and the engineers and conductors on each of the trains were not guilty of violating any of the rules given for their guidance, and were not negligent in the management of their trains respectively, then the Alexandria and Washington Railroad Company, or its receiver, as you may find upon the evidence and instructions already given you, together with such of the other defendant companies

336 as you may determine from the evidence and the instructions of the court, are jointly associated and acting with the Alexandria and Washington Railroad Company, or with the receiver, in running and operating trains over the Alexandria and Washington railroad, are guilty of negligence in not furnishing proper and safe signals or making other safe and suitable provisions to enable trainmen to pass this dangerous place with their trains in safety."

To which instruction and ruling of the court, counsel for all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants prays the court to sign and seal this, their sixtieth bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills

of exceptions, which are made a part hereof, the court voluntarily and of its own motion further instructed the jury as follows:

"Some parol evidence has been given to the jury with the view and object of establishing a general custom among trainmen and engineers to stop when approaching the arch upon discovering a train on the opposite side of the arch and then await a signal from one to the other to proceed, and that such signal was given without any reference to priority of one train over another. I think it is my duty to rule all this testimony out, and to instruct you to disregard it altogether."

To which instruction and ruling of the court, counsel for
337 all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their sixty-first bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL]

Be it remembered that upon the trial of the above-entitled cause, and after the signing and sealing of the defendants' foregoing bills of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"As to the liability of the Pennsylvania Railroad Company, I give you in charge the following prayer of its counsel: 'In determining the question as to whether or not the defendant The Pennsylvania Railroad Company is liable for the injuries complained of in these causes, the jury cannot infer such liability from the fact (if the jury should find it to be a fact) that the said defendant was, at the time of the accident complained of, the owner of stock or of bonds issued by either of the other defendant corporations. (Such ownership cannot be considered as evidence tending to establish or prove such liability.') That is all given except the last sentence in parenthesis. I think that observation would be misleading, and would require comment. The fact that they owned bonds and stocks might be, and I think properly, competent evidence to go to the jury in this case. These circumstances are to be considered with all the other circumstances from which the jury are to determine whether or not the Pennsylvania Railroad Company has any such interest in this case as will hold it liable and responsible to the plaintiffs."

To which instruction and ruling of the court, counsel for
338 all the defendants in both suits, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their sixty-second bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

Be it remembered that upon the trial of the above-entitled causes, and after the signing and sealing of the defendants' foregoing bills

of exceptions, which are made a part hereof, the court voluntarily and of its own motion instructed the jury as follows:

"Neither will it be sufficient to show in addition that the directory of the Pennsylvania Railroad Company and that of the other defendant companies, excepting the Virginia Midland Railway Company, were composed to a greater or less extent of the same persons, or that some of the officers of the Pennsylvania Company were the same as in the other defendant companies. In order to find that the Pennsylvania Company is liable in this case you must find that there was some actual arrangement by which the Pennsylvania Company was interested with the other companies other than the Midland Company in running the trains over this road which the other companies, except the Midland Company, were interested in; or you must be satisfied from the evidence that by reason of some arrangement or condition of things, the Pennsylvania Company had the right as between the parties as a corporation to and did issue any order or regulation that it choose, to those who were engaged in running trains over the Alexandria and Washington railroad in relation thereto, and that such orders and regulations when made were accepted and obeyed. If satisfied of this by evidence which to your minds establishes the fact by a preponderance of evidence you will return a verdict against the Pennsylvania Railroad
339 Company, if you find that those who were operating the trains that met in the collision were guilty of negligence and were the same companies that you find were so subject to the orders and regulations made by the Pennsylvania Company."

To which instruction and ruling of the court, counsel for all the defendants in both cases, except the Virginia Midland Railway Company, then and there duly excepted, and the exception was, at the time, noted upon the minutes of the court, and counsel for the defendants pray the court to sign and seal this, their sixty-third bill of exceptions, which is accordingly done, now for then, this 15th day of July, A. D. 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

And the foregoing bills of exceptions attached together and contained within manuscript pages from one to three hundred and eighty-six inclusive, and numbered from one to sixty-three inclusive, are connected together, every one being made part of all the others, and they with their recitals contain the tendency of all the testimony introduced in the cases, and on the request of counsel for all the defendants, except the Virginia Midland Railroad Company, *is* hereby made a part of the record in the said two causes, *nunc pro tunc*, this 15th day of July, A. D. 1889; and it is further ordered that this bill of exceptions be filed and docketed in each of the said causes and that it stand as the bill of exceptions in each with the same force and effect *and* if made in duplicate and filed in each cause.

And to the signing and sealing of this and each of the foregoing bills of exceptions the plaintiff's counsel in each case objects and protests, as set forth in the objections filed in each of these causes

on the 25th day of June, 1889, which is hereby referred to and made part hereof. But the chief justice, who presided at the
340 trial, overruled said objections, and each of them, and to each of his judgments in so overruling them the plaintiff in each case excepted, and prayed that the following rules of the court, to wit, rule No. 2, fixing the terms of the court; rules No. 54 to 60, both inclusive, in relation to new trials; rules 61 to 65, both inclusive, in relation to exceptions and bills of exceptions and cases, and rule 89, in relation to appeals to the general term, be made part of these bills of exceptions, and certified by the clerk of this court as part hereof, which is accordingly done. Signed and sealed this 15th day of July, 1889.

E. F. BINGHAM, *C. J.* [SEAL.]

341 *Motion to Strike out Bills of Exceptions, to Dismiss Motion for New Trial on Bills of Exceptions, and to Strike Case from General Term Calendar. Filed Oct.* 5, 1889.

In the Supreme Court of the District of Columbia, in General Term.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26298.

and

CHARLES T. STEWART
vs.
THE PENNSYLVANIA RAILROAD COMPANY *et al.* } At Law. No. 26303.

And now comes the said plaintiffs, by their attorneys, and, appearing in the general term specially for the purpose of objecting to the jurisdiction of the said general term in each of said causes and for no other purpose whatever, move the court as follows, to wit:

First. To declare that the bills of exceptions filed in the
342 clerk's office in each of said causes on the 15th day of July, 1889, form no part of the record thereof, and to expunge and strike them from the files of the court.

Second. To dismiss the motion for a new trial upon bills of exceptions filed in each of said causes in the clerk's office on the 15th day of July, 1889; and,

Third. To strike said causes from the calendar of the general term.

Said motions are based upon the following grounds, amongst others, to wit:

First. Said causes were tried at the January term, 1889, of the circuit court, which expired by limitation and was adjourned without day on the 11th day of May, 1889, and said term was not prolonged by adjournment for the purpose of preparing bills of exceptions in said causes, nor did the counsel for defendants during said term prepare bills of exceptions and submit the same to counsel for

plaintiffs or notify them of any time at which it was proposed that the same should be settled, or that application would be made to the court to settle bills of exceptions at all or to extend the term
343 for that purpose, but said bills of exceptions were prepared after the final adjournment of said term and settled and signed on the 15th day of July, 1889, without the consent of the attorneys for plaintiffs and against their objections and protests.

Second. The chief justice who presided at the trial of said causes had no authority or jurisdiction to settle and sign said bills of exceptions on the 15th day of July, 1889, when the same were done.

Third. At the time said bills of exceptions were settled and signed no motion for a new trial or appeal was pending, and the time had then expired within which the defendants could legally make such motion or take such appeal.

Fourth. The only motion for a new trial filed in said causes within four days after verdict was a motion "on exceptions," addressed to the justice who presided at the trial, of which the general term could obtain jurisdiction only by appeal from the judgment of said justice overruling said motion, and no such judgment was made, and consequently no appeal was or could have been taken.

344 Fifth. Said motion for a new trial "on exceptions" was defective in failing to state the specific grounds upon which it was based, and no notice was given to the attorneys for the plaintiffs of the filing of said motion or of the intention of defendants' attorneys to move the court to act thereon, and said justice could not properly and did not take jurisdiction thereof or act thereon, and the defendants' attorneys abandoned the same.

Sixth. No appeal has been taken by the defendants from any judgment of the circuit court in said causes or from any judgment or ruling of the justice who presided at the trial.

Seventh. No motion for a new trial upon bills of exceptions was made in either of said causes within four days after verdict or at the time at which said causes were tried.

Eighth. The motion for a new trial upon bills of exception filed in said causes on the 15th day of July, 1889, was filed more than four days after verdict and after the term at which said causes were tried and was not filed in the circuit court.

345 Ninth. Because said bills of exceptions were settled and signed and said motions for a new trial were made, in violation of the law and the rules of said court in relation thereto, as set forth in sections of the Revised Statutes of the United States relating to the District of Columbia, numbered from 803 to 806, both inclusive, and the general rules of said court numbered 2 and from 54 to 65, both inclusive, and 89, which are hereby referred to and made a part of this motion.

W. A. COOK,
COLE & COLE,
Attorneys for Plaintiffs.

To Enoch Totten and H. H. Wells, attorneys for the defendants.

GENTLEMEN: Take notice that the foregoing motions have been filed in the above causes, and that on the 21st day of October, 1889, at the meeting of the court on that day, or as soon thereafter as counsel can be heard, we will call the same to the attention
346 of the court and ask its judgment thereon.

Respectfully,

W. A. COOK,
COLE & COLE,
Attorneys for Plaintiffs.

Rec'd copy of the foregoing motion and notice this 5th day of Oct., 1889.

ENOCH TOTTEN,
For Appellants.

Proceedings in General Term.

MONDAY, *April 7th*, 1890.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the first Monday, April 7th, 1890.

Present, presiding: Justices Hagner and James; Justice Cox absent, holding equity court and chief justice holding criminal court.

MONDAY, *June 16th*, 1890.

Session resumed pursuant to adjournment.
Present, presiding: Justices Hagner, Cox, & James.

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347 THOMAS W. JONES } 26298. Law.
vs.
THE PA. R'R'D CO. }

and

CHARLES T. STEWART } 26303. Law.
vs.
PA. R'R'D CO. }

Opinion, verbal, by Mr. Justice Cox, sustaining the verdict of the jury, at special term and refusing new trial.

MONDAY, *June* 23, 1890.

Session resumed pursuant to adjournment.
Present, presiding: Justices Hagner, Cox, and James.

* * * * * * *

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY and Others } At Law. No. 26298.

and

CHARLES T. STEWART
vs.
THE PA. R'R'D CO. *et al.* } At Law. No. 26303.

348 The motions of the plaintiffs filed in these causes to strike out the bills of exceptions and dismiss the causes from the calendar of the general term having been argued by counsel for the respective parties and considered by the court in general term and overruled at a former term of the court, and the formal order overruling the same not having been entered on the minutes at length at that time, though noted therein at the time, it is this 23d day of June, 1890, now for then, considered and ordered that the said motions and each of them filed in each of said causes be, and the same are hereby, overruled.

THOMAS W. JONES
vs.
THE PENNSYLVANIA RAILROAD COMPANY & Others. } At Law. No. 26298.

And now come again the parties, by their attorneys, and thereupon, on consideration of the defendants' motion for a new trial upon bills of exceptions and the argument thereon by
349 counsel for the respective parties, it appears to the court that there is no error in the record of the judgment of the special term entered in this case on the first day of May, 1889. It is therefore this 23d day of June, 1890, by the court in general term considered that the defendants' said motion for a new trial be, and the same is hereby, overruled, and that the plaintiff- do recover against the said defendants, to wit, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Washington Railroad Company and The Alexandria and Fredericksburg Railway Company, and John Cassels, the surety for said defendants upon appeal the amount of the judgment of the said special term, to wit, the sum of ten thousand dollars, with interest thereon from the date of the judgment of the said special term until paid, and the costs of this suit, to be taxed by the clerk, and that he do have execution thereof.

350 *Opinion of Justice Cox in General Term. Filed July* 3, 1890.

THOMAS W. JONES, Plaintiff, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE & POTOMAC RAILROAD COMPANY, The Virginia Midland Railway Company, The Alexandria & Fredericksburg Railway Company, The Alexandria & Washington Railroad Company, Defendants.	At Law. No. 26298.

Opinion delivered by Mr. Justice Cox June 15, 1890.

I am requested to deliver the opinion of the court in the cases of Thomas W. Jones and Charles T. Stewart *vs.* The Pennsylvania R. R. Co. and others.

It appears that at a place called Four-mile run, some four miles south of the Long bridge, on the road to Alexandria, the Alexandria and Washington railroad passes through a culvert. The culvert is not wide enough to admit of two tracks, and consequently the two tracks approach the tunnel and converge and interlace at that point, so as virtually to become only one track. Just after passing through the tunnel they separate again into the two original tracks. On either side of the tunnel there is, or was, an arrangement for automatic electrical signals, the operation of which is, that when one, the first, train approaches the tunnel, if the device is in working order it will exhibit a red light on the opposite side of the tunnel as a warning to the other train which approaches, that the track is already occupied. If the track is not so occupied when a train approaches, it will show a clear white light.

The plaintiffs in these cases were postal clerks in the service of the United States, and on the 19th of February, 1885, about 10 o'clock in the evening, they were on a train of the Virginia Midland R. R. Co., which was coming north and approaching the tunnel. A fast freight train, said to be under the direction of the Alexandria and Fredericksburg R. R. Co., was going south and approached the tunnel at about the same time. The narrowness of the tracks in the tunnel of course makes it necessary, under these circumstances, that one train shall stop and allow the other to pass through. There is conflicting testimony as to the condition of the signal arrangement on this occasion; that is to say, as to whether it was in working order or not. At all events, neither train did stop. The north-bound train approached the culvert, and the engineer of that train observed the other train on the northern side of the tunnel, but supposed that it was stationary and he did not stop. He soon afterwards discovered, however, but too late, that it was in motion and approaching. Instead of stopping he put on all his steam for the purpose of rushing through the tunnel and getting onto the double track before the other train could reach the point where the tracks diverge. He miscalculated, however, and the result was a

fearful collision, in consequence of which a number of people were killed and these plaintiffs very seriously injured.

They brought suit against the Pennsylvania R. R. Co., the B. & P. R. R. Co., the Virginia Midland R. R. Co., Alexandria and Fredericksburg R. R. Co., and the Alexandria and Washington R. R. Co. The declaration alleges that the defendants were running a through line from Baltimore to Quantico, in Virginia, and that they were operating these roads upon joint account, dividing the profits and being a species of partnership, with a partnership liability between them—not strictly a partnership, but that there was at
351 least a joint liability—so that all the officers and employees on any one of these roads were in fact the agents of all these companies, and that these companies were, therefore, all responsible for the damages resulting from the negligence of such agents or employees. The suit was brought originally against all these railroad companies upon that theory.

Upon the trial a great deal of testimony was given, much of it of a circumstantial character, and a great many instructions were asked, and the result of it was a verdict in favor of the Virginia Midland R. R. Co. and against all the other companies, in favor of one of the plaintiffs for $15,000, and in favor of the other for $10,000. The cases come before us on a motion for a new trial on sixty-four bills of exception.

It is hardly necessary to say that to discuss these in detail would be an endless task. I think, however, that the instructions may be classified and may be considered in groups, so to speak. The body of the instructions actually given by the court will be found in the charge to the jury; and I do not know that I can do better in this case than to examine the testimony set out in the bills of exceptions and compare it with the charge and then ascertain how far the testimony justifies the charge, and afterwards consider the exceptions.

The first effort was to prove the solidarity of interests between the B. and P. R. R. Co., the Alexandria and Washington R. R. Co., and the Alexandria and Fredericksburg Railway Co., and sundry items of evidence were offered with that view: For example, Mr. Wilkins, who was the receiver of the Alexandria and Washington Co., was examined, and he testified, as appears from the record on page 219, that when he was appointed receiver he found in existence certain running arrangements among the Alexandria and Washington, Alexandria and Fredericksburg, and Baltimore and Potomac railroads by which they *prorated their expenses and earnings and were operated by the same operating officers and agents*, and that he continued such arrangement. Again, on page 225, he says: "The rights of the A. and F. railway are somewhat difficult to define, because there has never been any written contract between the respective interests. *The B. and P., the A. and W., and the A. and F. roads have a community of interests south of Washington, which make it most economical and desirable to operate as one interest, although an accurate subdivision of both earnings and expenses has at all times been made from the books of the auditor and treasurer.*" He

had stated the same in his testimony in another case, and is asked if it is correct, and he says, "Yes, sir; that is correct."

Another circumstance offered in evidence was, that the employees of all three of these roads were paid by the same common agent from a pay-car that started from the east—that is, from Baltimore, and went all along the lines and paid the men employed on these different roads. Another circumstance adverted to is the advertisement of travel over these roads, which I shall have occasion to refer to in another connection. It is called the Great Pennsylvania route, and embraces all these roads. Still another circumstance which is not without its weight, probably, is that the officers of the three roads would seem to be employed interchangeably upon these different roads. As an illustration of that, we are referred to the fact that this very freight train which came into collision with the passenger train was officered by parties on the roll of these different companies. The engineer and fireman of the freight engine, at the time of the collision, were both on the pay-roll of the B. and P. R. R. Co. for the months of January and February, 1885, and the conductor and brakeman were on the pay-roll of the A. and F. for said months. One of the brakemen on the freight train, who had been on the line for about eight or nine months prior to the accident, had been braking on the trains in the yard at Washington and on the line from Baltimore to Quantico, etc. It is also testified that in the running of trains on all parts of the roads from Washington to Quantico, in the operation of said roads from Washington, employees of one company used the rolling stock of the other companies, and engines of one company hauled cars of the others.

Very little importance should be attached to the circumstance that the cars of one company are on the roads of other companies, because that is an arrangement existing all over the country. But when we find that the officers on the pay-rolls of these different companies seem to be acting together, sometimes on the same train, it bears very much the appearance of an operation on joint account. Another circumstance relied on is the fact that Mr. Sharp, of the B. and P. R. R., had charge of these automatic signals on the A. and W. road. According to the testimony, he had charge of the trainmen all along the line of these three roads.

These are circumstances offered to the jury with a view of showing a joint interest in the operation of these three roads on the part of these companies. There are undoubtedly arrange-
352 ments between companies having connecting lines that do not involve in any way a joint liability. For the convenience of the public, for example, the passenger is allowed at one end of a series of connecting lines to purchase what is called a coupon ticket over the whole line, and to pay his fare in one sum. That does not amount to anything like a partnership or import a joint obligation which the companies assume. In that case, each coupon represents simply the fare over one of the connecting lines. In that case, the company receives simply the fare over its own line. It pays its own expenses out of its own earnings, and has no interest in any-

thing but the proportion of the fare which the coupon represents. But when companies having connecting lines agree to divide their earnings and their expenses also upon some basis such as that of trackage or mileage, or of the value of stations and other property, quite a different aspect of affairs is presented. It may be, for instance, that one of such companies has to pay a much larger expense per mile than the other, and if the expenses are prorated according to the mileage, it would follow that it would be taking from the earnings of the other companies. And so, if it paid much less expense than the others, it would be giving to them. This gives each company a direct interest in the business of the other roads. It does not constitute a commercial partnership, and we do not suppose that several railway companies could enter into a commercial partnership which would involve a joint liability for all debts and obligations of every description of each company, or necessitate the joining of them all in an action sounding in contract; but here there was shown a joint interest in the transactions and in the earnings of a particular service, and therefore each company and its agent would, in the prosecution of that business over its line, be the agent of all the others as well as acting in his own interests,

Therefore, it would follow, that each company would be liable for the negligence of those agents.

There is a question made in the argument, how far it is possible for several connecting railroad companies to enter into an arrangement of this sort. We have been referred to a case in the 21st Howard, in the Supreme Court, to show that two independent companies could not consolidate themselves into one. That is no doubt true, unless it is provided for by statute. But at the same time the Supreme Court recognized the rule as generally prevailing, and recognized by State authorities, that one company may contract for the transportation of goods beyond its own line and become responsible for their safe transportation, and the same is true as to passengers. If they can do that, it is pretty difficult to define exactly the limits of their capacity to contract beyond their own lines. The moment a train passes from one road to another, according to the custom, it passes into the control of the officers of that road, and yet if the original company has assumed that liability, it is not affected by the fact that on each road the general control over the train is exercised by the officers of that road, who become, *pro hac vice*, those of the company which contracted to transport safely over that road beyond its own line.

In the case of Insurance Company *vs.* The Railroad Company, reported in 104 U. S., there is a squinting at this sort of an arrangement, although the question was really not involved in that case, where it was sought to make several connecting lines of road all responsible for an injury sustained on one of them. That contention was not sustained. Judge Harlan in his opinion, speaking of the arrangement that did exist, said:

"Such an arrangement did not, in our opinion, involve joint liability upon the part of the railroad companies, or make them part-

ners either *inter esse* or as to third persons. Each company *bore the general expenses of its own route and of all transportation over it. The division, upon the basis merely of distance, of the aggregate pay for the entire route covered by the roads of these companies gave each one no greater amount than perhaps it would have earned* had the dispatch company contracted with each, separately, for the transportation of the cotton."

That is to say, where there was no division of the general expenses, and each company took its share of the fare and attended to its own expenses, there was no liability. Now, the converse of that proposition is not asserted; but there is room for an implication that the division of expenses as well as of the gross earnings might involve this joint liability.

As to the right of corporations to make arrangements of that sort we find a series of cases referred to in the late work, Morawitz on Corporations, in which it is said—and I read from section 220:

"SEC. 220. The management of the affairs of a corporation cannot be taken out of the hands of its regularly appointed and responsible agents and transferred to the agents of another company. It follows therefore, that a corporation cannot enter into a copartnership even to further its proper enterprise. For the existence of a copartnership would not only interfere with the management of the corporation by its regularly appointed officers, but would control the authority of the stockholders themselves and involve the corporation in new responsibilities.

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"SEC. 221. It is well settled that a railroad company may, without express authority in that behalf, make contracts to convey passengers and freight to points beyond the limits of its own line and as a necessary incident to this right it may make contracts with other carriers for the regulation of their joint business.

"In practice it is often difficult to determine whether a traffic arrangement between two companies be authorized by their charters or not. Each case must depend largely upon its particular circumstances. But the general principles which govern are clear. A corporation cannot enter into a partnership nor can it delegate any of its franchises to another company, whether by a sale, a lease or a mere license. And it is settled that the enterprise for the prosecution of which a corporation was formed cannot be extended beyond the limits fixed by the company's charter. But all corporations have implied authority to enter into contracts for the purpose of attaining their legitimate objects; and accordingly railroad companies may make any reasonable arrangements with each other for the purpose of regulating and increasing their legitimate joint traffic.

"SEC. 222. Thus it has been held that railroad companies owing connecting lines may, by contracts between each other, fix the time of running trains and the rate to be charged upon transportation."

"The companies may agree, and individuals may agree, to certain rates of transportation which may be considered mutually advantageous. Neither company has parted with its corporate power; each acts for itself and under its own power of fixing the rates for transportation, and they both agree that the charge shall be uniform

throughout the line," "Agreements between companies owning connecting lines providing for a division between them of all their earnings derived from joint traffic upon fixed proportions are authorized; and an agreement of this kind may be valid, although a large portion of the joint earnings be given to one company than is in proportion to the work which it has done."

Now, if a company can contract to carry passengers and freight safely beyond its own lines, it cannot, of course, do that without the consent of the connecting companies, and upon such conditions as they may prescribe; and I do not see why one of the conditions upon which the companies may agree that their lines shall be used interchangeably may not be, that the general expenses of the whole traffic, as well as the earnings, may be apportioned among them; and if that is done, then, as I have endeavored to show, it establishes an interest in each company in the traffic over each line and makes the agent of each company the agent of all for the purposes of conducting that business.

The charge of the justice in special term on this point, at page 265 of the record, is as follows:

"The Baltimore and Potomac Company has shown, by its charter, that its road proper stops at the south end of the Long bridge. But it is claimed by the plaintiffs that several years before the occurrence of the collision an arrangement was made by the Baltimore and Potomac, the Alexandria and Washington, and the Alexandria and Fredericksburg railroad companies, which was in force at the time of this accident, by which these three companies were to have a community of interest in operating the three roads as a single line in the business of transporting freight and passengers. It will be your duty to carefully consider the testimony relating to this claim thus made, and if you find therefrom that there was an arrangement by which the several trains run by each company over these roads were in the interests of all, each contributing to the expense and sharing a portion of the profits, as they might be determined by a common agent, according to a rule agreed upon by them, each company would be liable for an injury occurring by the negligence of the employees on any one of such trains, if under the particular circumstances the injured party, as a matter of law and fact, be entitled to a recovery from either party. This inquiry and direction has fitting application to the fast freight train south bound which was in collision, inasmuch as it started from Baltimore to run over the entire road of each of these companies to Quantico. You will look to the evidence for the purpose of determining, as far as you may, whether it came within any such alleged arrangement by plaintiff, as I have already mentioned. To determine whether there was any such arrangement it will be proper for you to inquire whether the evidence shows that trains run over the tracks of these three companies to transact their business were made up of cars or locomotives belonging to one or two or three of the companies indifferently, as might be convenient, and whether the employees running
354 and having charge of such trains were those of either of the companies as might be suitable or convenient for the occa-

sion; whether the general manager, superintendent, train master, and other officers having control of the business were the same person, and whether such officers in fact conducted the business on and over the roads of these three companies as a single business of that line, so far as the public had opportunity of knowing, the accounts being kept by a common agent, who made a division of expenses and profits between these companies according to an arrangement understood by and known to each of these companies and their privies, but unknown to the public, including the plaintiffs.

"If you shall find these several inquiries in the affirmative, then as to these plaintiffs, it will be your duty to regard these defendant companies as joint principals, each having an interest in the trains so run upon said line, and jointly and severally liable for the negligence of any of the employees upon any of such trains, provided you shall find that the Alexandria and Washington Railroad Company is properly sued in this action from the evidence and under instructions already given."

Some criticism has been made upon this part of the charge which refers to the probability that the public did not know of any arrangement other than that which appeared upon the face of things; but I think that is justified by the language of the Supreme Court in the case to which I shall refer presently, of the Railroad Company *vs.* Brown.

This expresses the law, as we understand it, upon the facts which had been given in evidence to the jury, and the jury could infer therefrom the fact of the joint interest of all these companies in this business; and it seems to us that the facts which were testified to were sufficient to go to the jury. It is, of course, a matter of judgment what conclusion should be drawn from them, but we think that they were sufficient *prima facie* evidence to lay before the jury, and if the jury found the joint interest of all these companies, the law is properly stated by the court in its charge.

At the trial, there was an effort on the part of the other companies to throw the burden of this loss upon the Virginia Midland Co., by showing that the negligence of the engineer on that train was the real cause of the accident. The name of the engineer was Bruce. It turned out upon the proof, that if there was a combination of all these other companies, the Virginia Midland was not in that combination. They simply paid a certain compensation for the use of the roads and for the privilege of passing their trains over the other roads. They had no participation in the earnings of the other companies. If, however, the engineer of that train was negligent and the accident was attributable to that negligence, it is very true, that this railroad company would be responsible equally with the others, and the judge so instructed the jury.

But it further appears in the case that, when that train reached the track of the Alexandria and Washington road it was under the supreme control of another person, Mr. Bennett, who was called a pilot, representing the Baltimore and Potomac railroad and the Alexandria and Fredricksburg road, or the combination, as the case may be—representing other companies, at all events; that he

had so far the actual control of the train that he might direct it to go or stop. If that be true, the court was right, we think, in saying that whether the Virginia Midland Co. was responsible or not, the parties represented by Mr. Bennett would be equally so.

The jury found substantially, as we infer, that Bruce was not in fault, and that the accident was not to be attributed to his negligence and they exonerated the Virginia Midland Co.

The next question is, how far the Pennsylvania R. R. Co. is to be connected with this combination, with these other roads, the B. & P., A. & W., and the A. & F. A number of circumstances were offered in evidence tending to show that behind the B. & P., if not behind the other two roads, stood the Pa. R. R. Co. as the active manager of all. I believe the Pa. R. R. Co. owns the majority of the stock of the B. & P., and perhaps all of its bonded indebtedness, amounting to nearly $2,000,000, and all the bonded indebtedness of the A. & F. Co., amounting to $1,000,000. These facts alone, however, would not be sufficient to establish an identity between the Pennsylvania Co. and these companies, because any creditor of the road, or any stockholder would be in the same relation and the circumstance alone of being a creditor or stockholder would not make the Pennsylvania Co. any more liable than any individual stockholder. And so the judge told the jury; but he said that these circumstances might be offered in evidence in connection with other circumstances, and that if there was evidence tending to prove that the Pennsylvania R. R. Co., in its corporate capacity, and not as a creditor or stockholder, did exercise control over any of these companies, directing its business, controlling it and
355 managing it, then it would follow that the company was really identified with them in interest and also in responsibility.

The first evidence offered on this subject on the part of the plaintiff was the testimony of Mr. Barbour, who was formerly the president of the Virginia Midland R. R. Co., which showed the arrangement by which the trains were run over these roads, and that it was made directly with the chief officers of the Pennsylvania Railroad Company. He said, in answer to a question: "So far as the contract was made, it was an entirety with the Pennsylvania railroad people from Alexandria to Washington. There was no division when the matter was discussed with Mr. Roberts and the principal officers of the Pennsylvania road. There was no discussion as to who owned the road between Alexandria and the south end of the Long bridge, or who owned the line from the south end of the Long bridge to the 6th-street depot. *We discussed it as an entirety, as property under the control of the Pennsylvania Railroad Company. They were running the Baltimore and Potomac, and they were running a through line from New York to Quantico in the latter part of the period.*

Q. The Pennsylvania Railroad Company were? A. *Yes, sir; the Pennsylvania authorities.* I would not say the Pennsylvania Company in its legal sense. There might have been some parties interposed, but *I dealt, as the chief executive officer of the Midland,*

with these gentlemen. They divided the road from Alexandria to Washington, as I understand it. These gentlemen had some division.

Q. The arrangement that you did make for the privilege of running your trains from Alexandria into Washington over the Washington and Alexandria track and the Baltimore and Potomac track *was made with the authorities of the Pennsylvania Railroad Co.? A. Originally, yes, sir.*

Q. What I want to know is, if you remember whether your company was to pay anybody anything for the privilege of running your Midland trains from Alexandria to Washington and back, or whether they gave you that privilege for nothing. He answered: "No, sir; I stated in the beginning that we were to pay a *per capita*, I think thirty-five cents for each passenger, and so much on freight for each car-load, or by the ton.

Q. "And that arrangement was made with Mr. Scott, the president of the Pennsylvania Railroad Company? A. With Mr. Scott and Mr. Roberts. I think originally with Scott and later with Roberts, with some modifications."

He amplifies this same idea in other parts of his testimony, which I think it is hardly necessary for me to repeat more at length.

And there was offered in evidence a report of the board of directors of the Pennsylvania Railroad Company, which is found on page 107 of the Record, being the report of March 2, 1885, in which the board of directors submitted their report for the year 1884, "*with such data, relating to the lines controlled by your company as will give you a clear understanding of their physical and financial condition.*" It commences:

First. The Pennsylvania Railroad division.

Second. *The Baltimore and Potomac railroad connects your lines with Washington and the South.* It shows the following results for 1884.

Then comes the Alexandria and Fredericksburg railroad:

"*The Alexandria and Fredericksburg railway is still operated by trustees. Its results show an improvement over the preceding year.*"

The report of March 1, 1886, found on page 190 of the Record, contains the same expression.

"The Baltimore and Potomac Railroad Company connects your lines with Washington and the South."

This is not, of itself, conclusive, but still it is an indication in the direction of assertion of control by this company over the Baltimore and Potomac and the Alexandria and Fredericksburg roads.

Again comes the advertisement, which I referred to a little while ago, of the Great Pennsylvania route to the North, West and Southwest. Then it goes on to say that *trains leave Washington from the station at the corner of Sixth and B streets, for Chicago, and they leave for Alexandria.*

Then it refers to the Alexandria and Fredericksburg railway and the Alexandria and Washington railroad, and says: "*Tickets and information at office, northwest corner of 13th street and Pennsylvania avenue, and at the station,* where orders can be left for the checking

of baggage for hotels and residences; signed, Charles E. Pugh, general manager; J. R. Wood, general passenger agent." These same persons are the general manager and general passenger agent of the Pennsylvania Railroad Company.

Perhaps one of the most important facts is the sale of tickets over the roads by the Pennsylvania Railroad Company. As I stated a little while ago, where a company sells a coupon ticket over its own route *and connecting lines*, there is no particular significance attached to that fact. It sells the ticket then as the agent for the other
356 roads. But the Pennsylvania Railroad Company has an office here in Washington, and it sells tickets from Baltimore to Quantico over the Baltimore and Potomac and other roads, beginning at a point separated from its own road proper, which runs from Philadelphia to Pittsburg, by all of the distance between Baltimore and Philadelphia. It sells tickets from Washington to the South; that is to say, over roads separated by a hundred miles from its road proper. It seems to be very singular that a company should be doing that which had no interest in the business which it was thus managing. It is not like selling over its own road and then over connecting lines; but it acts independently of any such connection, and although it does not work the lines directly in its own name, yet it has an office here and by its agent sells tickets over these roads and receives the money for them, making some division afterwards. That is a very strong fact to go to the jury to indicate some participation in the business of these roads and control over them.

Another quite significant fact was, that the Pennsylvania Railroad Company made a claim on the Washington and Alexandria railroad *for its proportion of damages for the destruction of merchandise in this very collision.* There was an attempted explanation of this, but it was not clearly testified to. There was an intimation that the Pennsylvania Company had assumed some responsibility for the freight on its own lines and then was seeking to reclaim what it had to pay to the other roads. If that had been so, it would be entitled to claim the whole damages from the other road, if they were entirely independent in their business dealings; but that was not the case. It sent a bill to the Washington and Alexandria Railroad Company, *for its proportion* of the damages occasioned by this collision. That implies, of course, that somebody else has to bear a proportion of the loss and that this company, if it paid damages, would have its proportion to pay. That is a somewhat significant fact in the direction of showing joint responsibility, as it appears to us.

Another fact relied upon was, that the mail pay received by the Washington and Alexandria Railway Company from the Government was divided up amongst these three roads, and that there was a meeting of the directors of that company authorizing that money to be paid into the hands of Lieb as cotreasurer for all of these companies, and that the meeting took place at the office of the Pennsylvania Railroad Company in Philadelphia.

All of these circumstances were submitted to the jury and we

think they are sufficient *prima facie* evidence to go the jury as indicating the identity of the Pennsylvania Railroad Company with the whole combination, as you may express it, or with the Baltimore and Potomac road, and that in fact they were running the Baltimore and Potomac road.

The charge of the justice on that subject is found on pages 271 and 272 of the Record. He says:

"As to the liability of the Pennsylvania Railroad Company, I give you in charge the following prayer of its counsel:

"'In determining the question as to whether or not the Pennsylvania Railroad Company is liable for the injuries complained of in these causes, the jury cannot infer such liabilities from the fact, if the jury should find it to be a fact, that the said defendant was at the time of the accident complained of the owner of the stock or bonds issued by either of the other defendant corporations. (Such ownership cannot be considered as evidence tending to establish or prove such liability.)'

"That is all given except the last sentence. I think that observation would be misleading and would require comment. The fact that they owned the bonds and stock might be, and I think properly, competent evidence to go to the jury in this case. These circumstances are to be considered with all the other circumstances on which the jury are to determine whether or not the Pennsylvania Railroad Company has any such interest in this case as will hold it liable and responsible to the plaintiff.

"Neither will it be sufficient to show in addition that the directory of the Pennsylvania Company and that of the other defendant companies, except the Virginia Midland Company, were composed, to a greater or less extent, of the same, or that some of the officers of the Pennsylvania Company were the same, as in the other defendant companies. In order to find that the Pennsylvania Company is liable in this case, you should find that there was some actual arrangement by which the Pennsylvania Company was interested with the other companies, other than the Midland Company, in running the trains over this road, which the other companies, except the Midland Company, were interested in; or you must be satisfied from the evidence that by reason of some arrangement or condition of things, the Pennsylvania Company had the right as between the parties, as a corporation, to and did issue any order or regulation that it chose to those who were engaged in running
357 trains on the Alexandria and Washington railroad in relation thereto, and that such order and regulation which when made were accepted and obeyed. If satisfied of this by evidence which to your minds establishes the fact by a preponderance of evidence, you will return a verdict against the Pennsylvania Railroad Company. If you find that those who were operating the trains which met in the collision were guilty of negligence and were the same companies that you find were so subject to the orders and regulations which were made by the Pennsylvania Company, you are not to act upon surmise or suspicion, but evidence direct or circumstantial sufficient to satisfy you of the existence of the facts, and if

the evidence fails to establish the necessary facts, your verdict should be for the Pennsylvania Railroad Company. Indeed, it is proper to say here that all facts necessary to be established in order that plaintiff may recover against any of the defendants should be established by a preponderance of the evidence."

It seems to us that the evidence justifies the charge. The facts were sufficient to go to the jury; and if they did find the facts referred to in the charge, the charge correctly expresses the law.

It is, perhaps, not amiss here to remark that all of these circumstances seem, in our judgment, to point to at least the appearance of interest in and control by the Pennsylvania Railroad Company over this business, and that is strengthened by the fact that the defendants have made no effort to explain away what I might call the compromising circumstances. There was nothing easier than for the Pennsylvania Railroad Company and these other companies to show exactly what the arrangement was between them; to show what they got and that it constituted nothing but a division of the gross profits—of the gross fare received either for freight or passengers. But there was not the slightest attempt made to do that, and it seems to us a pretty strong justification for leaving to the jury the evidence which was submitted to them as a basis for their finding.

It was attempted, however, at the trial to show that the Alexandria and Fredericksburg Company were not liable to a verdict in this case, because the road was in the hands of trustees and not in the hands of the company itself. It does appear that the company executed a mortgage to secure $1,000,000 of bonds, and one of the provisions of that mortgage was that upon default the trustees shall, at the request in writing of the holder or holders of said bonds or any part thereof, have the right and power after giving thirty days' notice of such default of the party of the first part in the payment of said interest as aforesaid, or in the payment of the principal sum when the same shall have matured, as aforesaid, to enter and take possession of said Alexandria and Fredericksburg railroad, together with all and singular the franchises, property, estate, equipments, buildings, shops, engines and cars and every species of property, right, title, or interest belonging thereto, in whatever shape the same may exist, and also to take possession of all records, stock books, account books or vouchers for any money due the said company upon any instrument in writing or from any source whatever, or that may be requisite to give information as to the affairs and real condition of said company, and the said trustees or their successors are hereby invested with power to enforce the delivery of the said books, vouchers, and credits or any part thereof. And said trustees, or their successors, may also, at their option, *appoint a receiver, auditor, agent or agents, to conduct the affairs of said road or to work the same for the benefit of the holders of said bonds or coupons so overdue or their assigns.*

There is a question as to how far the company had the power to execute this mortgage; but assuming for the purposes of the argument that they could execute it, if there had been a foreclosure of the

mortgage and the road had legally passed entirely out of control of the company of course they were no longer liable to suit. But as long as the mortgage was not foreclosed the property was in the company, and if they did authorize the trustees named in this mortgage or their successors to enter upon and take possession of this road, and work the road, the latter necessarily did so as the agents for the company, and also for the creditors. The company could not, by putting its road in the hands of agents, whom they call trustees, exonerate themselves from responsibility for working that road. It does not appear, in point of fact here, that the circumstances ever arose which justified the trustees in taking possession; at least it does not appear that there was a default in the payments made, etc., and it does not appear that the trustees had the power under the mortgage to take possession of the road themselves. They were authorized to appoint a receiver to do it. And this was not done. They took possession themselves, and apparently without authority. But either with or without authority they took possession as trustees or agents of the company, and were
358 their agents. The company could not divest itself of its property or responsibility by that operation, in our judgment.

The charge of the court on that point is found on page 264 of the Record. The court says:

"The Alexandria and Fredericksburg Railroad Company also pleads that it was not a common carrier on the road where the accident occurred, in addition to the plea of not guilty, and upon this trial it supports its plea by showing that its road at the time of the accident and for some time before, had been in the possession of trustees, by virtue of the provision of the deed of trust executed by the company to secure its indebtedness, the condition of which had become broken by the maturity and non-payment of the debt so secured. In order that the Alexandria and Fredericksburg Railroad Company may be acquitted of responsibility for this reason, it should, in any event, appear that, in fact, the business of management and operation of the road was conducted by the trustees to the entire exclusion of the company, its officers and board of directors, and that it was so notoriously so that it may well be presumed to be known to the public.

Besides, it should appear that the trustees were not appointed by the procuration or assent of the railroad company; for if so, the trustees would be as much the agents of the company as the grantees in the trust deed. The supreme court of appeals of the State of Virginia, in an action brought against the Alexandria and Fredericksburg Railroad Company for personal injuries resulting from negligence on the road while in the possession of trustees, by virtue of the deed of trust, under conditions precisely similar to those shown in this case, held that: "No provision is found in the charter of the defendant company or the general railroad law of Virginia, which will authorize the company to transfer to trustees or to mortgagees under the deed of trust given as a mere incumbrance and security, the right and legal capacity to step into the

shoes of the company and assume and exercise indefinitely the franchises, rights and privileges of the company, so as to give the company exemption and immunity from responsibility for all injuries inflicted by the operation of the road by the trustees." I quote this language for accuracy and convenience and adopt it and give it to you as the law in this case. It follows that the Alexandria and Fredericksburg Company cannot be excused from liability because of any possession shown in the trustees."

In this case, too, we think the court was right, and we will refer in that connection also to the case of Thomas *vs.* The Railroad Company, 101 U. S., page 71; Pennsylvania R. R. Co. *vs.* The St. Louis, &c., R. R. Co., 118 U. S., p. 90, and Oregon R. R. Co. *vs.* Oregon, &c., 130 U. S., p. 110.

It is claimed on behalf of the Alexandria and Washington road that it was in the hands of a receiver, and that it had no control over its own road, and should not be held responsible for anything that occurred upon the road. On this subject the charge of the court was:

"If you find from the evidence that the Washington and Alexandria Railroad Company was carrying United States mail between Alexandria and Washington, and the plaintiffs were in charge thereof as postal clerks, duly commissioned and designated by the United States for that duty, and the Alexandria and Washington Railroad Company was paid by the United States by draft payable to the order of the agent of said company, appointed by its board of directors to receive the same, and that the freight and passenger trains which collided and caused the injury to plaintiffs were running over said road in pursuance of arrangements made by the parties in control of said road, prior to the appointment of the receiver of said road, and if, when the receiver was appointed, he continued in office as superintendent, general manager and treasurer, the same persons as had theretofore discharged the duties of these positions, and if the business of this railroad, so far as was known to the public, was continued in the same way, so far as the general public could know, as before, and was so conducted at the time of the accident, and that the only substantial duty that the receiver discharged was to receive the net earnings of the road from the treasurer and to account therefor to the court, by which he was appointed; and if you shall find that the Alexandria and Washington railroad is guilty of negligence from the evidence and under the instructions of the court, your verdict will be against them for the plaintiff. But if you are satisfied that the business of the Alexandria and Washington railroad, so far as the Alexandria and Washington Railroad Company's interest was concerned, was conducted by the receiver after his appointment and at the time of the collision in question, in his own name and in such manner that it could be generally known by the public that he, and not the company, conducted the business and controlled the road and its management, and that he did so to the entire exclusion of any control or participation therein by the Alexandria and Washington
359 Railroad Company, its officers and board of directors, then

your verdict should be for the Washington and Alexandria Railroad Company."

The evidence in this case tended to show that the only duty discharged by the receiver, after going through the formality of sanctioning the appointments already existing of persons in the control of the business of that road, consisted in receiving the net earnings of that company, and that he took no personal part whatever in the management of the company; that the management was continued in the parties who had been in the management of the road in pursuance of the arrangement between these three roads, of which I have already spoken.

It seems to us that under these circumstances, and that state of the evidence left to the jury, the charge was correct.

The case of The Railroad Company *vs.* Brown, 17 Wallace, 445, appears to sanction this. That was an action against a railroad company which had passed into the hands of a receiver, and the court said:

"The second assignment of error denies the liability of the corporation for anything done while the road is operated by the lessees and receiver. It is the accepted doctrine in this country that a railroad corporation cannot escape the performance of any duty or obligation imposed by its charter or the general laws of the State by a voluntary surrender of its rights into the hands of lessees. The operation of the road by the lessees does not change the relations of the original company to the public.

"It is argued, however, that this rule is not applicable where the proceeding instead of being voluntary is compulsory, as in the case of a transfer of a possession to a receiver by the decree of a court of competent jurisdiction.

"Whether this be so or not, we are not called upon to decide, because it has never been held that the company is relieved from liability unless the possession of the receiver is exclusive and the servants of the road wholly employed and controlled by him.

"In this case the possession was not exclusive nor were the servants subject to the receiver's order alone. On the contrary, the road was run on the joint account of the lessees and receiver, the servants employed and controlled by them jointly. Both were, therefore, alike responsible for the act complained of; and if so, the original company is also responsible, for the servants under such an employment, in legal contemplation, are as much the servants of the company as of the lessees and receiver.

"Apart from this view of the subject, the ticket on which the plaintiff rode was issued in the name of the Washington, Georgetown and Alexandria Railroad Company, as were all tickets sold at both ends of the route. The holder of such a ticket contracts for carriage with the company, not with the lessees and receiver. Indeed, there is nothing to show that Catherine Brown knew of the difficulties into which the original company had fallen, nor of the part performed by the lessees and receiver in operating the road. *She is not required to look beyond the ticket, which conveyed the information that this road was running, as railroads generally are, by a char-*

tered company. Besides the company having permitted the lessees and receiver to conduct the business of the road in this particular, as if there was no change of possession, is not in a position to raise any question as to its liability for their acts."

That part which I last read is important as bearing upon the objection I noted a little while ago, to the feature in the charge which attaches some importance to the circumstance that the public did not know of the change in the condition of these companies, with reference to the appointment of trustees and receivers.

On the facts testified to, if the jury believed them, we are of the opinion that the court was correct in its charge in this respect, and that the company did not cease to be liable by virtue of the fact that a nominal receiver was in receipt of the net income that belonged to the Alexandria and Washington Railroad Company.

This covers the substance of the charge and the facts as applicable to these three companies. The exceptions may be classified thus:

First. The first twenty-six bills of exceptions, as I remember, were to the admission of evidence offered on the part of the plaintiff, with perhaps one exception, and all of that evidence related to the particular facts and circumstances that I have referred to, and which we considered as having gone properly to the jury.

It might be remarked here that the court is really not bound to consider any of these exceptions because in not a single instance is any reason assigned for the objection made, and the Supreme Court has lately characterized that as an improper practice in the case of Woodbury *vs.* The District of Columbia. But we have taken the trouble to examine every one of these exceptions in detail and it does not seem to us that any of them are well founded, as to the admissibility of various items of evidence offered by the plaintiff.

There is one exception, and that is the refusal of the court to
360 admit evidence on cross-examination of one of the plaintiff's witnesses which probably ought to have been admitted. It looks, on its face, as if there were error there. On the examination of the plaintiff's witness, a question was asked as to the duties of certain officers, and why certain officers were employed by the different companies. But it does not appear that anything was lost by this to the defendants. It was a part of their case, and they might have called some witness or any number of witnesses as to the same facts. It was open to them in that stage of the case to offer evidence for that purpose. We do not see, therefore, that any harm was done to them by the exclusion of this evidence.

Then there are some questions on the refusal to admit parol evidence with regard to subjects in relation to the right of way and other questions of that sort, which we think were better established by the printed regulations of the company. We do not think those objections well founded.

After that follows a series of exceptions to the prayers. Some of these prayers are already embodied in the charges of the court, and there is, therefore, no ground of objection on that score. The other instructions that were asked come in direct conflict with the charge

in those very particulars, in which we are of opinion that the charge is correct, and therefore they must be overruled, all of them.

The last group or class consists simply of exceptions to separate parts of the charge, which as a whole we approve, and therefore it is not necessary to go into any details as to them.

Therefore, upon the whole, we do not find any errors in the rulings of the court below that *was* of any prejudice to the defendant-, and the motion for a new trial on bills of exceptions is overruled.

At the close of the testimony there is a general prayer that the plaintiff is not entitled to recover upon the whole evidence; but as we consider that evidence all proper to go to the jury, it follows that the exception could not be sustained.

The judgment of the court below is affirmed.

The foregoing is a corrected stenographic report of the opinion of the general term as delivered by me.

W. S. COX.

361 *Bond for Writ of Error. Filed July* 30, 1890.

In the Supreme Court of the District of Columbia, the 30th Day of of July, 1890.

THOMAS W. JONES, Plaintiff, *vs.* THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE and Potomac Railroad Company, The Alexandria & Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, Defendants, and John Cassels.	At Law. 26298.	No. In Error.

Know all men by these presents that we, The Pennsylvania Railroad Company, The Baltimore & Potomac Railroad Company, The Alexandria & Fredericksburg Railway Company, The Alexandria and Washington Railroad Company, and John Cassels, principals, and J. Donald Cameron, surety, are bound unto the above-named Thomas W. Jones in the sum of twenty thousand dollars ($20,000.00), to be paid to the said Thomas W. Jones, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 29th day of July, 1890.

Whereas the above-named The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alex-
362 andria and Fredericksburg Railway Company, and The Alexandria & Washington Railroad Company and John Cassels have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company and John Cassels shall prosecute their said writ of error to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE PENNSYLVANIA RAILROAD COMPANY, [SEAL.]
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, [SEAL.]
THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY, [SEAL.]
THE ALEXANDRIA AND WASHINGTON RAILROAD COMPANY, [SEAL.]
By E. TOTTEN, *Att'y-in-Fact.*
JOHN CASSELS. [SEAL.]
J. D. CAMERON. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved.
July 30th, 1890.
A. B. HAGNER.

363 *Writ of Error to the Supreme Court of the United States.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Thomas W. Jones, plaintiff, and The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, and The Alexandria and Washington Railroad Company, defendants, and John Cassels, a manifest error hath happened, to the great damage of the said defendants and John Cassels, as by their complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 30th day of July, in the year of our Lord 1890, and of the Independence of the United States the one hundred and fifteenth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

Allowed.

A. B. HAGNER, *Justice.*

July 30, '90.

364 *Citation to the Supreme Court of the United States.*

The United States of America to Thomas W. Jones, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railroad Company, and John Cassels are plaintiffs and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness Honorable A. B. Hagner, justice of the said supreme court of the District of Columbia, in the year of our Lord one thousand eight hundred and ninety.

July 30, 1890.

A. B. HAGNER,
Associate Justice.

Service acknowledged on this 31st day of July, in the year of our Lord one thousand eight hundred and ninety.

WILLIAM A. COOK,
C. C. COLE,
Att'y for Thos. W. Jones.

365 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 1st day of August, 1890.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk*.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 1st day of August, 1890.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 1st day of August, 1890.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk*.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 14,283. District of Columbia supreme court. No. 260. The Pennsylvania Railroad Company, The Baltimore & Potomac Railroad Company, The Alexandria & Fredericksburg Railway Company, The Alexandria & Washington Railroad Company, and John Cassels, plaintiffs in error, *vs.* Thomas W. Jones. Filed October 14, 1890.